



DAYTON CITY COUNCIL
REGULAR MEETING

111 S. 1st St

HYBRID MEETING - In Person & Zoom REVISED 02/13/2023

February 14, 2023
6:00 p.m.

PRELIMINARY AGENDA

A. Call to order

1. Roll call
2. Pledge of Allegiance

B. Approval of agenda

1. ACTION: Consider authorizing 02/14/2023 City Council Agenda as presented

C. Public Comment

D. Sheriff Joe Helm – Columbia County Sheriff's Department

E. Tina Bobbitt – Columbia County Emergency Management Director

F. Ryan Rundell - Columbia County Board of Commissioners

G. Belinda Larsen – Chamber of Commerce Quarterly Report

H. Consent Agenda - Action

1. Approval of January 10, 2023, Regular Council Meeting Minutes.
2. Approval of Claims Voucher Warrants as audited by the Finance Committee
in the amount of = **\$ 77,685.58**
Voucher #'s 54998-55020, 55045
Approval of Payroll Voucher Warrants for January 2023 = **\$ 94,143.03**
Voucher #'s 54961-54982, 55021-55042

I. Items for Council Consideration/Action

1. **Recommended Action-** Consider Authorizing Ordinance No. 2000 – An Ordinance of the City of Dayton, Washington, Granting a Franchise to Spectrum Pacific West, LLC locally known as Charter Communications, Franchisee for the Construction, Operation and Maintenance of Telecommunications Facilities Within the City.
2. **Recommended Action** – Confirm the Mayor's re-appointment of Ginny Butler to the Historic Preservation Commission.
3. **Recommended Action** – Consider Authorizing Ordinance No. 1999 – An Ordinance of the City Council of the City of Dayton, Washington, Declaring A Local Emergency Related to the Extensive Damage to the City of Dayton's Wastewater Treatment Plant Caused By Winter Weather Conditions On December 22, 2022.
4. **Recommended Action** – Consider Authorizing Resolution No. 1507 – Authorizing the Mayor to enter into a Purchase Agreement with Douglas Krueger and Marjory L. Krueger for the purchase of a portion of LOT 2 MCCA W SHORT PLAT, SW ¼ S OF HWY, EX RD & LOT 1 for the purpose of WWTP Project.

J. Standing Committee Reports/Comments

K. Department Reports

L. Unfinished Business

M. New Business

N. Final Public Comment

O. Adjournment

- *Next City Council meeting is scheduled for March 14, 2023*

City of Dayton is inviting you to a scheduled Zoom meeting.

Topic: Dayton Regular City Council Meeting

Time: February 14, 2023 @ 6:00 pm – VIA ZOOM

Join Zoom Meeting

<https://us02web.zoom.us/j/3561226503>

Meeting ID: 356 122 6503

One tap mobile

+12532158782,,3561226503# US (Tacoma)

DAYTON CITY COUNCIL MINUTES

Regular Meeting

Tuesday Jan. 10, 2023

HYBRID MEETING

ZOOM AND IN-PERSON MEETING

Dayton, Washington 99328

CALL TO ORDER:

A. Call to order

Mayor Weatherford calls the meeting to order at approximately 6:00 p.m.

Roll Call: Present: Councilmembers: Teeny McMunn, Dain Nysoe, Tiger Dieu, Kyle Anderson, Jim Su'euga, Shannon McMillen, Laura Aukerman

Staff: Deb Hays - City Clerk/Treasurer, Ryan Paulson - Public Works Director, Misty Yost – Deputy City Clerk

Pledge of Allegiance.

B. Approval of agenda

1. ACTION: Consider authorizing 1/10/2023 City Council Agenda as presented:

Aukerman makes a motion authorizing 1/10/2023 City Council Agenda as presented. Su'euga seconds the motion. Agenda approved, unanimously.

C. Public Comment – No Public Comment.

D. Sheriff Joe Helm - Columbia County Sheriff's Department – Helm provides the council with the latest incident reports. He also reports on staff training, Citizens Academy meetings, Crime watch, posey program and upcoming community events and programs. Helm also thanks the community and other organizations for the Law enforcement appreciation event.

E. Tina Bobbitt – Columbia County Emergency Management Director- *Bobbitt updates the council on emergency calls within the City and County. Council and Mayor Weatherford question Bobbitt on her plans for formation of Emergency response groups. Bobbitt states that they are currently working on the Comprehensive Emergency Management Plan.*

F. Ryan Rundell – Columbia County Board of Commissioners- *Rundell updates council in on new hires, union negotiations and budget amendments.*

Flood control District report. No Report. Council questions Rundell on letter from commissioner in regard to the flood control hazard mitigation plan. Rundell Responds that the county is still pursuing grant moneys to develop a flood hazard mitigation plan but does not have a timeline for implementation of plan. Council questions Rundell about dissolving the Flood Control Dist. Rundell responds that the Flood Control District will likely be dissolved to lack of funding for insurance.

G. Presentation – Larry Hector & Connie Taylor-Randall, of Walla Walla/Columbia County Accessible Communities Advisory Committee give a presentation on the Accessible Communities Act and the need for better accessibility for people with disabilities. Council questions Taylor-Randall in regard to grant money and funding for past and future projects. The group also speaks in regard to projects past, present and future for Columbia County.

H. Presentation and Discussion – Charter Communications Franchise Agreement. Mayor Weatherford, Ryan Paulson and Council discuss the franchise agreement and possible issues with the Representatives from Charter Communications.

I. Consent Agenda - Action

1. Approval of December 13, 2022, Regular City Council Meeting Minutes.
2. Approval of Claims Voucher Warrants as audited by the Finance Committee in the amount of \$161,679.60. Voucher #'s 54847-54860, 54875-54905, 54908-54912, 54943-54947.
3. Approval of Payroll Voucher Warrants for December 2022 in the amount of \$91,680.62. Voucher #54861-54874, 54906-54907, 54913-54942.

McMunn makes a motion to authorize Consent Agenda. Nysoe seconds the motion. Motion carries unanimously.

J. Items for Council Consideration/Action.

1. Consider appointing Dain Nysoe to serve as Mayor Pro-Tern for 2023

Jim Su'euga nominates Dain Nysoe. Council discusses. McMunn Seconds. Motion passes 4 to 2. With Aukerman and Dieu voting against.

- 2. Recommended Action-** Consider Authorizing Resolution No. 1506 -A Resolution of the City of Dayton, Washington, sponsoring a Non-City Entity Application for Membership in the Association of Washington Cities (AWC) Workers' Compensation Retrospective Rating Program (RETRO) for Columbia County Public Transportation. David Ocampo General Manager of Columbia County Public transportation explains the need/requirement for Resolution 1506. Council questions Ocampo and discusses. ***Su'euga makes a motion Authorizing Resolution No. 1506, A Resolution of the City of Dayton, Washington, sponsoring a Non-City Entity Application for Membership in the Association of Washington Cities (AWC) Workers' Compensation Retrospective Rating Program (RETRO) for Columbia County Public Transportation. Aukerman seconds the motion. Motion carries unanimously.***

K. Standing Committee Reports/Comments

Public Safety – ***Anderson reports on School zone issues and new signage and crosswalk concerns.***

Public Works -***Aukerman -Reports on priorities for public works, sewer plant issues, need for new equipment. Aukerman also reports on completion of repairs to the flap gate as well as research with other cities for the cost and repairs.***

Finance Committee -***Nysoe – No report.***

Parks and Grounds –***Su'euga – No report.***

Planning and Community Development – ***McMunn reports on the number of permits reported from the Columbia County Planner. McMunn also reports on other workshops that she attended.***

Human Resources – ***Dieu –Reports on discussions about employee contracts as well as policy changes and new termination process.***

Transportation – ***McMillen -No report.***

Chamber –***Teeny McMunn – No report.***

L. Department Reports

Mayor Reports/Comments – ***Mayor Weatherford updates council on city council workshops, projects for 2023 as well continuing negotiations for the purchase agreement for wastewater treatment plant project. Weatherford also introduces a letter regarding the sediment build up in the Touchet river for the Councils approval and signatures. To be sent along with a similar letter from the County Commissioners to be sent out to other groups and government agency for assistance with this matter.***

Public Works Director – ***Ryan Paulson – Paulson reports on permitting and repairs to the Touchet river floodgate, as well as downed trees in the park. He also reports on replacement of water meters, break in's and vandalize at the City Cemetery and restrooms. Paulson informs council that he is working with the sheriff's office in regard to these issues. Paulson also reports on sewer plant issues and repairs that are needed as well as purchase of new equipment as well as on upcoming classes for grant writing. Paulson discusses issues that may arrive with the possible building of a new facility on port property.***

City Clerk Treasurer –***Debra Hays- Hays updates council on finalizing of budget issues as well as grants, end of year and annual reports.***

M. Unfinished Business- No unfinished business.

N. New Business – No new business.

O. Final Public Comment- *No public comment*

P. Adjournment

With no further business to come before the Council, the meeting is adjourned at 8:10 P.M.
Su'euga makes a motion to Adjourn the City Council meeting of January 10th, 2022, Aukerman seconds the motion. Motion carries, unanimous.

Next regular City Council meeting is scheduled for 2/14/2023.

City of Dayton

By: Zac Weatherford

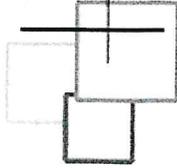
Attested:

Approved:

Date

Deb Hays, City Clerk Treasurer

Register



Fiscal: 2023
 Deposit Period: 2023 - January
 Check Period: 2023 - January - January-31, 2023 - January - January-12

Number	Name	Print Date	Clearing Date	Amount
Bank of Eastern Oregon				
Check	7270002352			
54961	Alznauer, Timothy A	1/12/2023		\$1,101.91
54962	Fletcher, Lloyd	1/12/2023		\$1,836.97
54963	Hays, Debra M.	1/12/2023		\$2,528.49
54964	Lambert, Isaiah J	1/12/2023		\$1,482.96
54965	Moore, Duane E	1/12/2023		\$1,480.94
54966	Moton, Donald G.	1/12/2023		\$1,603.34
54967	Paulson, Ryan A	1/12/2023		\$2,463.56
54968	Strickland, Eddie L	1/12/2023		\$1,865.67
54969	Sweetwood, David	1/12/2023		\$1,513.65
54970	Walker, Alan J	1/12/2023		\$1,473.41
54971	Westergreen, Connie	1/12/2023		\$1,583.00
54972	Yost, Misty	1/12/2023		\$408.28
54973	Council No. 2	1/12/2023		\$7,200.30
54974	Internal Revenue Service - U S Treasury	1/12/2023		\$300.00
54975	Eddie Strickland	1/12/2023		\$300.00
54976	Fletcher, Lloyd	1/12/2023		\$300.00
54977	Lambert, Isaiah J.	1/12/2023		\$300.00
54978	Moton, Donald	1/12/2023		\$300.00
54979	Ryan Paulson	1/12/2023		\$300.00
54980	Sweetwood, David	1/12/2023		\$300.00
54981	Walker, Alan J.	1/12/2023		\$300.00
54982	Duane Moore	1/17/2023		\$162.76
54998	Dept Of Ecology	1/24/2023		\$840.00
54999	AHBL, INC	1/25/2023		\$412.50
55000	Centurylink	1/25/2023		\$64.78
55001	City of Dayton	1/25/2023		\$1,176.39
55002	Col CO Solid Waste	1/25/2023		\$61.14
55003	Col Co Treasurer	1/25/2023		\$915.00
55004	Col Co Treasurer	1/25/2023		\$53,542.71
55005	Col County Health System	1/25/2023		\$150.00
55006	Dayton Chronicle	1/25/2023		\$250.00
55007	Ferrellgas	1/25/2023		\$1,465.66
55008	Jamestown Networks	1/25/2023		\$498.00
55009	Jasper Mountain Enterprises LLC	1/25/2023		\$100.00
55010	Kelly Connect	1/25/2023		\$208.42
55011	Konen Rock Crushing, Inc	1/25/2023		\$298.90

55012	Pacific Power	1/25/2023	\$15,571.55
55013	Petty Cash - City Of Dayton	1/25/2023	\$6.43
55014	Steinhoff Construction, LLC	1/25/2023	\$325.20
55015	The Times	1/25/2023	\$135.00
55016	Tri-City Sign and Barricade	1/25/2023	\$534.41
55017	Vision Municipal Solutions	1/25/2023	\$948.99
55018	Vision Municipal Solutions	1/25/2023	\$27.50
55019	WPTA	1/25/2023	\$50.00
55020	United States Postal Service	1/26/2023	\$63.00
55021	Alznauer, Timothy A	1/31/2023	\$1,514.09
55022	Aukerman, Laura U	1/31/2023	\$138.52
55023	Dieu, Tyler A.	1/31/2023	\$138.52
55024	Fletcher, Lloyd	1/31/2023	\$2,205.38
55025	Hays, Debra M.	1/31/2023	\$2,572.58
55026	Lambert, Isaiah J	1/31/2023	\$1,708.20
55027	McMunn, Eileen M	1/31/2023	\$138.52
55028	Moore, Duane E	1/31/2023	\$1,755.61
55029	Moton, Donald G.	1/31/2023	\$2,076.06
55030	Nysoe, Dain	1/31/2023	\$138.52
55031	Paulson, Ryan A	1/31/2023	\$2,489.47
55032	Strickland, Eddie L	1/31/2023	\$1,897.83
55033	Sweetwood, David	1/31/2023	\$1,994.84
55034	Walker, Alan J	1/31/2023	\$2,282.02
55035	Weatherford, Zachary M	1/31/2023	\$867.30
55036	Westergreen, Connie	1/31/2023	\$1,819.62
55037	Yost, Misty	1/31/2023	\$1,690.08
55038	AFLAC Remittance Processing	1/31/2023	\$408.24
55039	AWC EMPLOYEE BENEFIT TRUST - PAYROLL	1/31/2023	\$17,476.51
55040	Dept of Retirement Systems	1/31/2023	\$10,597.21
55041	Internal Revenue Service - U S Treasury	1/31/2023	\$8,615.36
55042	WSCCCE	1/31/2023	\$1,209.00
55045	Zac Weatherford	1/31/2023	\$40.00
	Total	Check	\$171,828.61
	Total	7270002352	\$171,828.61
	Grand Total		\$171,828.61

ORDINANCE NO. 2000

AN ORDINANCE OF CITY OF DAYTON, WASHINGTON GRANTING TO SPECTRUM PACIFIC WEST, LLC LOCALLY KNOWN AS CHARTER COMMUNICATIONS, THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO LOCATE, CONSTRUCT, INSTALL, OWN, MAINTAIN, REPAIR, REPLACE, EXTEND, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF THE TRANSMISSION, DISTRIBUTION AND SALE OF FIBER OPTIC TELECOMMUNICATIONS AND COMMUNICATIONS SERVICES

WHEREAS, , Spectrum Pacific West, LLC locally known as CHARTER COMMUNICATIONS, has filed with the City of Dayton, State of Washington (the "City") a written application for a Franchise to locate, install, construct, operate, maintain telecommunication and fiber optic lines and appurtenances and to use such works, underground and overhead lines, cables, equipment, pedestals, antenna and appurtenances over, under, along and across all of City's rights of way and public property in the City for the purposes of the transmission, distribution and sale of wireline and wireless telecommunications and communications services;

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such non-exclusive franchise be granted to CHARTER COMMUNICATIONS,

NOW, THEREFORE, the City of Dayton, Washington does hereby ordain as follows:

SECTION 1.0 DEFINITIONS

For the purposes of this Franchise the following terms, phrases, words and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

1.1 Franchisee. "Franchisee" means as CHARTER COMMUNICATIONS, .

1.2 City. "City" means City of Dayton, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.3 Days. "Days" means business days.

1.4 Effective Date. "Effective Date" means the date of legal publication of this Ordinance, upon which the rights, duties and obligations of this Franchise shall come into effect, and the date from which the time requirement for any notice, extension and/or renewal shall be measured.

1.5 Facilities. "Facilities" means, collectively, any and all transmission and distribution systems and appurtenances owned by the Franchisee, now and in the future in the Franchise Area, including but not limited to, poles, wires, fiber lines, pipes, conduits, vaults, and other appliances and conductors for such Telecommunications and fiber optic systems.

1.6 Franchise. "Franchise" means the non-exclusive grant by the City of rights, privileges and authority embodied in this Ordinance.

1.7 Franchise Area. “Franchise Area” means the surface and space above and below all rights-of-way for:

- (i) public roads, streets, avenues, alleys, bridges, tunnels, easements, and highways of the City, as now laid out, platted, dedicated, acquired, or improved within the present corporate limits of the City;
- (ii) public roads, streets, avenues, alleys, bridges, tunnels, easements, and highways that may hereafter be laid out, platted, dedicated, acquired, or improved within the present corporate limits of the City and as such limits may be extended by annexation or otherwise during the term of this Franchise;
- (iii) all City-owned utility easements dedicated for the placement and location of various utilities, provided such easements would permit the Franchisee to fully exercise the rights granted under this Franchise within the area covered by the easement; and
- (iv) any other specifically designated City-owned property.

1.8 Maintenance, maintaining, or maintain. The meaning of the terms “Maintenance, maintaining, or maintain” includes, without limit, repairing, replacing, upgrading, examining, testing, inspecting, and removing the Franchisee Facilities, vegetation management, digging and excavating, and restoration of affected right-of-way surfaces.

1.9 Parties. “Parties” means City and the Franchisee collectively.

1.10 Party. “Party” means either City or the Franchisee individually.

1.11 Person. “Person” means a business entity or natural person.

1.12 Public Project. “Public Project” means any City or other government-funded capital improvement project on the Rights-of-way or City property within the Franchise Area.

1.13 Right-of-way. “Right-of-way” means the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, utility easement and/or right-of-way now or hereafter held or administered by the City.

1.14 State. “State” means the State of Washington.

SECTION 2.0 GRANT OF FRANCHISE

City hereby grants to the Franchisee the right, power, privilege, and authority to enter upon all roads, rights of way, streets, alleys, highways, public places, or structures, lying within the Franchise Area to locate, construct, operate and maintain its Facilities f within the Franchise Area.

2.1 Effective Date

This Ordinance is effective as of the date of approval, passage and publication as required by law.

2.2 Term

The rights, privileges and Franchise hereby granted to the Franchisee will extend for a term of 25 years from the Effective Date, and shall continue year-to-year thereafter, until it is otherwise renewed for another 25-year term, or terminated by either Party, with not less than 180 days prior written notice to the other Party.

2.3 Non-Exclusive Franchise

This Franchise is not an exclusive Franchise. This Franchise shall not prohibit the City from granting other franchises within the Franchise Area that do not unreasonably interfere with the Franchisee's rights under this Franchise.

2.4 Assignment Of Franchise

The Franchisee shall have the right to sell, transfer or assign its rights, benefits, and privileges under this Franchise. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. As permitted by law and regulation, the Franchisee shall have the right, without notice to or consent of the City, to mortgage or hypothecate its rights, benefits, and privileges in and under this Franchise as security for indebtedness.

2.5 Franchise Taxes, Fees, and Costs

The Franchisee shall pay all permitting, license fees, costs and/or utility privilege taxes which it might be required to pay in connection with the issuance, maintenance, existence, continuation, or use of this Franchise, to the extent permitted by State law or the City ordinance now in effect or enacted during the term of this Franchise. The City reserves the right to designate the time and manner of payment of all fees, costs or taxes owed by the Franchisee in connection with this Franchise. Additionally, within 30 days following receipt of an invoice prepared by the City, the Franchisee shall reimburse the City for all administrative, legal, and other costs incurred by the City associated with the preparation, review, and approval of this Franchise ordinance. To the extent that any Franchise fees, taxes or other costs are imposed on the Franchisee, as specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon revenues derived by the Port for use of the right-of-way.

SECTION 3.0 FRANCHISEE'S OPERATIONS AND MAINTENANCE

3.1 Compliance with Laws, Regulations, Codes and Standards

In carrying out any authorized activities under the privileges granted by this Franchise, the Franchisee shall meet accepted industry standards and codes and shall comply with all applicable laws, regulations, and ordinances of any governmental entity with jurisdiction over the Franchisee's Facilities in the Franchise Area. This includes all applicable laws, regulations and ordinances existing as of the Effective Date or may be subsequently enacted by any governmental entity with jurisdiction over the Franchisee's operations within the Franchise Area. The City shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of the Franchisee's operations within the Franchise Area. Prior to the adoption of any new rule, procedure or policy, the Franchisee may be provided a written draft document for comment with a response period of not less than thirty days.

3.2 Facility Location and Non-Interference

The Franchisee shall have the discretion to determine the placement of its Facilities within the Franchise Area, subject to the following non-interference requirements. All construction, installation, repair or relocation of the Franchisee's Facilities performed by the Franchisee in the Franchise Area will be done in such a manner as not to interfere with the construction and maintenance of other utilities, drains, drainage and irrigation ditches and structures, and City-owned property within the Franchise Area.

3.3 Facility Location Information

The Franchisee shall provide the City, upon the City's reasonable request, Facility location information in electronic or hard copy showing the location of its Facilities at specific locations

within the Franchised Area, to the extent such information is reasonably available. The Franchisee does not warrant the accuracy of any such Facility location information provided and, to the extent the location of Facilities is shown, such Facilities may be shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of the Franchisee or the City, nothing stated in this Franchise is intended (nor shall be construed) to relieve either party of their respective obligations arising under the State one-call law with respect to determining the location of existing underground utility facilities in the vicinity of such excavations prior to commencing work.

3.4 Vegetation Management

The right of the Franchisee to maintain its Facilities shall include the right, as exercised in the Franchisee's professional discretion, to utilize an integrated vegetation management program to minimize the likelihood that encroaching (either above or below the ground) vegetation can interfere with or limit access to the Franchisee's Facilities or pose a threat to public safety and welfare. The Franchisee or its agents may accordingly remove or limit the growth of vegetation which encroaches upon its Facilities and distribution corridors within the Franchise Area.

3.5 Right Of Excavation

For the purpose of implementing the privileges granted under this Franchise, and after any required notification is made to the City, the Franchisee is authorized to make any necessary excavations in, under and across the streets, alleys, roads, rights of way and public grounds within the Franchise Area, provided that the Franchisee first obtains any necessary permits and/or land use authorizations. Such excavation shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the public as may be feasible. The Franchisee shall remove all debris stemming from excavation and construction. The Right-of-way surface shall be restored by the Franchisee after excavation, in accordance with applicable City and Franchisee specifications.

3.6 Emergency Work

In the event of an emergency requiring immediate action by the Franchisee to protect its Facilities, or the property of the City or other persons in the Franchise Area, the Franchisee may immediately proceed with excavation or other Right-of-way work, with concurrent notice to the City to the extent possible.

SECTION 4.0 RESERVATION OF CITY'S RIGHTS AND POWERS

The City, in granting this Franchise, does not waive any rights which it may now have or may subsequently acquire with respect to road rights-of-way or other property of the City under this Franchise, and this Franchise shall not be construed to deprive the City of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the City's roads, rights-of-way and other public property covered by this Franchise. Nothing in the terms of this Franchise shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain granted to it under the laws of this state.

4.1 Necessary Construction/Maintenance by City

The construction, operation and maintenance of the Franchisee's Facilities authorized by this Franchise shall not preclude the City, its agents or its contractors, from grading, excavating, or doing other necessary road work contiguous to the Franchisee's Facilities, provided that the Franchisee shall be given not less than ten business days' notice of said work, and provided

further that the City, its agents and contractors, shall be liable for any damages, including any consequential damages to third parties, caused by said work to any installations belonging to the Franchisee.

4.2 Removal Of Abandoned Facilities

During the Term of this Franchise, or upon a revocation or non-renewal of this Franchise, the City may direct the Franchisee to remove designated abandoned Facilities from the Franchise Area at its own expense and as soon as practicable, but only where such abandoned Facilities constitute a demonstrated threat to public health and safety. If it becomes necessary for the City to remove the designated Facilities the City shall be paid the reasonable and actual costs of removal by the Franchisee.

4.3 Vacation Of Properties by City

If, at any time, the City shall vacate any road, right of way or other public property which is subject to rights granted by this Franchise, such vacation shall be subject to the reservation of a perpetual easement to the Franchisee for the purpose of operating and maintaining the Franchisee's Facilities on the affected property. The City shall, in its vacation procedure, reserve and grant said easement to the Franchisee for the Franchisee's Facilities and shall also expressly prohibit any use of the vacated properties which will interfere with the Franchisee's full enjoyment and use of said easement.

SECTION 5.0 RELOCATION OF FRANCHISEE'S FACILITIES

5.1 Public Project Construction

Whenever the City causes the construction of any Public Project and/or the alteration or improvement of any road, highway or Right-of-way within the Franchise Area, and such construction necessitates the relocation of the Franchisee's Facilities from their existing location to another location within the Franchise Area, such relocation will be at no cost to the city. City shall notify the Franchisee of any intended or expected requirement or request to relocate the Franchisee's Facilities as early as practicable, but not less than 120 days prior to any such relocation. After receipt of such notice, the Franchisee shall complete relocation of its Facilities at least ten days prior to commencement of the project or an agreed upon date by both parties. If any relocation to accommodate the City forces the Franchisee off of a Right-of-way, then City will make a reasonable effort to accommodate said relocation on alternative public Right-of-way.

5.2 Public Project Related Relocation Costs

The City shall have no responsibility for the costs of the relocations described in Section 5.1 unless City has failed to provide the required advanced notice, then any and all reasonable excess costs caused by the failure to provide such notice shall be paid by the City. If the City requires the subsequent relocation of any the Franchisee Facilities previously relocated per Section 5.1, due to a Public Project within five years from the date of the initial relocation, the City shall bear the entire cost of such subsequent relocation. The city will provide Franchisee a copy of its plans for capital improvements of/for City-owned utilities and a copy of its six-year road transportation improvement program.

5.3 Relocation Of Facilities Requested by Third Parties

If the Franchisee's Facilities within the Franchise Area are to be relocated at the request of or for the primary benefit of a third party (including compliance by such party with any condition or requirement associated with approvals or permits to be obtained pursuant to any

zoning, land use, construction or other development regulation), the City shall not require the Franchisee to relocate its Facilities until such time as the third party has entered into an agreement with the Franchisee for the up-front reimbursement of Facility relocation costs, as specified by applicable tariffs.

5.4 Availability of Other Funds

In the event federal, state, or other funds are available in whole or in part for utility relocating purposes related to a Public Project, the City shall apply for such funds and the Franchisee will be reimbursed to the extent any such funds are actually obtained.

SECTION 6.0 INSURANCE AND INDEMNIFICATION

6.1 Insurance

Within ninety (90) days following the grant of a franchise, the Franchisee shall obtain, pay all premiums for, and make available to the City at its request copies of the following insurance policies:

- (i)** A general comprehensive liability policy indemnifying, defending and saving harmless the City, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Franchisee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of One Million Dollars (\$1,000,000) per personal injury or death of any one person, and Two Million Dollars (\$2,000,000) for personal injury or death of any two or more persons in any one occurrence;
- (ii)** Property damage insurance for property damage occasioned by the operation of the Franchisee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of One Million Dollars (\$1,000,000) for property damage to any one person and Two Million Dollars (\$2,000,000) for property damage to the property of two or more persons in any one occurrence;
- (iii)** All insurance policies called for herein shall be in a form satisfactory to the City and shall require thirty (30) days written notice of any cancellation to both the City and the Franchisee. The Franchisee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Franchisee of any notice of cancellation.

6.2 Alternative Insurance

As an alternative to the Insurance obligations set forth in Section 6.1, Franchisee may provide the City with proof of its membership in a risk sharing pool authorized by and operating pursuant to Chapter 48.62, RCW.

6.3 Indemnification of the City

The Franchisee agrees to defend and indemnify the City, its appointed and elected officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees, that the City may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the construction, installation, maintenance, condition or operation of the Franchisee's Facilities in the Franchise Area; provided, however, that this indemnification provision shall not apply to the extent that said

liabilities, claims, damages and losses were caused by or result from the negligence of the City, its employees or agents.

6.4 Indemnification of the Franchisee

City agrees to defend and indemnify the Franchisee, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney's fees, that the Franchisee may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from the negligent acts or omissions of the City, its officers, employees or agents in connection with City's obligations under this Franchise; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of the Franchisee, its employees or agents.

SECTION 7.0 FRANCHISE DISPUTE RESOLUTION

7.1 Non-waiver

Failure of a Party to declare any breach or default of this Franchise immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the Party shall have the right to declare any such breach or default at any time. Failure of a Party to declare one breach or default does not act as a waiver of the Party's right to declare another breach or default. In addition, the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation and forfeiture for breach of the conditions of the Franchise.

7.2 Revocation and Forfeiture of Franchise

If the Franchisee shall willfully violate or fail to comply with any of the provisions of this Franchise through willful and unreasonable neglect or willful and unreasonable failure to heed or comply with any notice given the Franchisee under the provisions of this grant, this Franchise may be revoked by the City and the Franchisee shall forfeit all rights conferred under the Franchise; provided, however, the City shall give 90-days' written notice of its intention to revoke the Franchise during which period the Franchisee shall have the opportunity to remedy any breach.

7.3 Dispute Resolution by the Parties

Disputes regarding the interpretation or execution of the terms of this Franchise, that cannot be resolved the Parties, shall be submitted to the City's attorney and the Franchisee's attorney for resolution. If a mutually satisfactory or timely resolution cannot then be reached by the above process, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the Parties.

7.4 Right of Enforcement

No provision of this Franchise shall be deemed to bar the right of the City or the Franchisee to seek judicial relief from a violation of any provision of the Franchise to recover monetary damages for such violations by the other party or to seek enforcement of the other Party's obligations under this Franchise by means of specific performance, injunctive relief, or any other remedy at law or in equity. Any litigation between the City and the Franchisee arising under or regarding this Franchise shall occur, if in the state courts, in Columbia County Superior Court, and if in the federal courts, in the United States District Court for the Eastern District of Washington.

7.5 Attorneys' Fees and Costs

Each Party shall pay for its own attorneys' fees and costs incurred in any dispute resolution process or legal action arising out of the existence of this Franchise.

SECTION 8.0 GENERAL PROVISIONS

8.1 Franchise As Contract, No Third-Party Beneficiaries

This Franchise is a contract between the Parties and binds and benefits the Parties and their respective successors and assigns. This Franchise does not and is not intended to confer any rights or remedies upon any persons, entities, or beneficiaries other than the Parties.

8.2 Force Majeure

In the event that the Franchisee is delayed in or prevented from the performance of any of its obligations under the Franchise by circumstances beyond the Franchisee's control (Force Majeure) including, without limitation, third party labor disputes, fire, explosion, flood, earthquake, power outage, acts of God, war or other hostilities and civil commotion, then the Franchisee's performance shall be excused during the period of the Force majeure occurrence. the Franchisee will use all commercially reasonable efforts to minimize the period of the disability due to the occurrence. Upon removal or termination of the occurrence the Franchisee will promptly resume performance of the affected Franchise obligations in an orderly and expeditious manner.

8.3 Severability

The Franchise is granted pursuant to the laws of the State of Washington relating to the granting of such rights and privileges by City. If any article, section, sentence, clause, or phrase of this Franchise is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the Franchise or any of the remaining portions. The invalidity of any portion of this Franchise shall not abate, reduce, or otherwise affect any obligation required of the Franchisee.

8.4 Changes or Amendments

No change or amendment to this Franchise shall be effective until lawfully adopted by the City and agreed to by the Franchisee.

8.5 Supremacy and Governing Law

This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington. In the event of any conflict between this Franchise and any City ordinance, regulation or permit, the provisions of this Franchise shall control. In the event of a conflict between the provisions of this Franchise and the Franchisee's applicable Tariff on file with the Commission, the Tariff shall control.

8.6 Headings

The headings or titles in this Franchise are for the purpose of reference only and shall not in any way affect the interpretation or construction of this Franchise.

8.7 Acceptance of Franchise

The Franchisee shall, within 30 days after passage of this Ordinance, file with the City Clerk, its acceptance of the terms and conditions of this Franchise.

8.8 Franchise Effective Date

The Effective Date of this Franchise shall be _____, 2023 provided that it has been duly accepted by the Franchisee as specified above. This Ordinance shall be in full force and effective five (5) days following its passage, approval, and publication.

Passed and adopted by the City Council of the CITY OF DAYTON, Washington the ____ day of _____, 2023.

Zac Weatherford, Mayor

Attest: _____
Debra M Hays, City Clerk Treasurer

Approved as to form and content:

Quinn Plant , City Attorney

Letter of Acceptance by Franchisee :

Spectrum Pacific West, LLC/Charter Communications

HONORABLE MAYOR
AND CITY COUNCIL
CITY OF DAYTON, STATE OF WASHINGTON

IN RE: City of DAYTON, Ordinance No. 2000

**“Granting a Franchise to Spectrum Pacific West, LLC locally known as
CHARTER COMMUNICATIONS, Franchisee for the Construction, Operation
and Maintenance of Telecommunications Facilities Within the City.”**

Spectrum Pacific West, LLC locally known as CHARTER COMMUNICATIONS, for itself, its
successors, and assigns, hereby accepts the terms and conditions of the Franchise
Agreement contained in the subject Ordinance and files this written acceptance with the
City of Dayton. This acceptance is executed on _____, 2023.

SPECTRUM PACIFIC WEST, LLC /CHARTER COMMUNICATIONS

By: _____

Executive Director

Copy Received for the City of Dayton

On: _____

By: _____

Zac Weatherford, Mayor

FRANCHISE AGREEMENT

This Franchise Agreement (“Franchise”) is between the City of Dayton, of Washington hereinafter referred to as the “Grantor” and Spectrum Pacific West, LLC locally known as CHARTER COMMUNICATIONS, hereinafter referred to as the “Grantee.”

WHEREAS, the Grantor finds that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community; and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, the Grantor and Grantee agree as follows:

SECTION 1 Definition of Terms

1.1 Terms. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined 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. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- B. “Council” shall mean the governing body of the Grantor.
- C. “Cable Act” shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- D. “Channel” shall mean a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.
- E. “Equipment” shall mean any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the maintenance and operation of physical facilities located in the Streets, including the Cable System.
- F. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.

- G. “Franchise” shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Franchise Area.
- H. “Franchise Area” shall mean the geographic boundaries of the Grantor and shall include any additions thereto by annexation or other legal means.
- I. “Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the Franchise Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state or federal regulatory fees, the franchise fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- J. “Service Area” shall mean the area described in subsection 6.1 hereto.
- K. “Standard Installation” shall mean installations to residences and buildings that are located up to 125 feet from the point of connection to Grantee’s existing distribution system.
- L. “State” shall mean the State of Washington.
- M. “Street” shall include each of the following located within the Franchise Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights-of-way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, extending, repairing and maintaining the Cable System.
- N. “Subscriber” shall mean any Person lawfully receiving Cable Service from the Grantee.

SECTION 2
Grant of Franchise

2.1 Grant. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, extend, operate, and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms, all Equipment, including the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or State law.

2.2 Term. The Franchise and the rights, privileges and authority hereby granted shall be for an initial term *of ten (10) years*, commencing on the Effective Date of this Franchise as set forth in Section 14.12. This Franchise will be automatically extended for an additional term of five (5) years, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.

2.3 Police Powers. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance necessary to the safety, health, and welfare of the public, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the mutual promises in this contract.

SECTION 3 **Franchise Renewal**

3.1 Procedures for Renewal. The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

SECTION 4 **Indemnification and Insurance**

4.1 Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor at least ten (10) days prior to the deadline for a response to the claim or action, if such a deadline exists, or otherwise within thirty (30) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System.

4.2 Insurance.

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

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

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

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

SECTION 5
Service Obligations

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

5.2 Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

SECTION 6
Service Availability

6.1 Service Area. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Franchise Area where there is a minimum density of at least thirty-five (35) residences per linear strand mile of aerial cable (excluding any home subscribing to any satellite service) as measured from Grantee's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request for service (the "Service Area"). The Cable Service will be provided at Grantee's published rate for standard installations if such residence is a Standard Installation. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Franchise Area where another operator is providing Cable Service or into any annexed area which is not contiguous to the Service Area. Grantee shall not be obligated to provide service to any area where it is financially or technically infeasible to do so. Grantee at its discretion may make Cable Service available to businesses within the Service Area.

6.2 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-standard Installation charges to extend the Cable System from the tap to the residence.

6.3 New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within fifteen (15) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the fifteen day period, the cost of new trenching is to be borne by Grantee.

6.4 Annexation. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and Section 6.1 above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Franchise Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Franchise Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Franchise Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 14.7 with a copy to the Director of Government Affairs. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

SECTION 7

Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

7.2 Construction Standards and Requirements. All of the Grantee's Equipment shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

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

7.4 Network Technical Requirements. The Cable System shall be designed, constructed, and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time.

SECTION 8 **Conditions on Street Occupancy**

8.1 General Conditions. Grantee shall have the right to utilize existing poles, conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property provided Grantee is able to access existing poles, conduits, or other facilities on reasonable terms and conditions.

8.2 Underground Construction. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any Street within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Franchise Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate, and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are

reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

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

8.6 Tree Trimming. Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities. To the extent required, Grantee will obtain permits required by Grantor for work in the public rights-of-way prior to performing such work.

8.7 Relocation for the Grantor. The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

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

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

8.10 Emergency Use. Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System (“EAS”).

SECTION 9 **Service and Rates**

9.1 Phone Service. The Grantee shall maintain a toll-free telephone number and a phone service operated to receive complaints and requests for repairs or adjustments at any time.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee’s name, address, and local

telephone number. Grantee shall give the Grantor notice of any changes in rates, programming services or Channel positions in accordance with applicable law.

9.3 Rate Regulation. Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

9.4 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee's rights under Section 14.2 of this Franchise.

SECTION 10 **Franchise Fee**

10.1 Amount of Fee. Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law. The amount of franchise fee and the method of calculation shall be equal when compared to the amount or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by Grantor. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a franchise fee under this Section 10.1 shall be reduced by an equivalent amount.

10.2 Payment of Fee. Payment of the fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 14.12. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges.

10.3 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

10.4 Limitation on Recovery. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due. If any undisputed Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from the last day of the fiscal year in which payment was due, at the annual rate of one (1%) percent over the prime interest rate.

SECTION 11
Transfer of Franchise

11.1 Franchise Transfer. The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

SECTION 12
Records

12.1 Inspection of Records. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the material terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than one (1) year, provided that Grantee shall retain books and records relevant to the payment of the Franchise Fee for a period of three (3) years. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books, records, or maps in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books, records, or maps marked confidential, as set forth above, to any Person.

SECTION 13
Enforcement or Revocation

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

13.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default

cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

13.3 Enforcement. Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 13.4 below, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. Revoke the Franchise itself in accordance with subsection 13.4 below.

13.4 Revocation.

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have at least thirty (30) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing, and stating its intent to revoke the Franchise. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days, the cost of which shall be borne by Grantee. The decision of the Board shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court and may continue operating under the terms of this franchise during the pendency of any such appeal.
- B. Notwithstanding the above provisions, the Grantee reserves all of its rights under federal law or regulation.
- C. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor or abandon the Cable System in place. Franchisee shall notify Grantee of in writing of its intention to abandon the Cable System in place.

SECTION 14 **Miscellaneous Provisions**

14.1 Compliance with Laws. Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules, and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the

event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.

14.2 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

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

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

14.5 Equal Protection. If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity. Nothing in this Section 15.5 shall be deemed a waiver of any remedies available to Grantee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545.

14.6 Change in Law. Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service in the Franchise Area to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be

deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

14.7 Notices. Unless otherwise provided by federal, State, or local law, all notices pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. As set forth above, notice served upon the Grantor shall be delivered or sent to:

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

Grantee: Charles Deister
Director, Government Affairs
222 NE Park Plaza Drive, Suite 231
Vancouver, WA 98684

Email: Charles.deister@charter.com

Copy to: Charter Communications
Attn: Vice President, Government Affairs
12405 Powerscourt Drive
St. Louis, MO 63131

14.8 Public Notice. Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

14.8.1 Grantor shall provide written notice to Grantee within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 15.7 above.

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

14.10 Entire Agreement. This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the Grantor, and they supersede all prior or contemporaneous agreements, representations, or understandings (whether written or oral) of the parties regarding the subject matter hereof.

14.11 Administration of Franchise. This Franchise is a contract and neither party may take any unilateral action that materially changes the mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

14.12 Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise. If any fee or grant that is passed through to Subscribers is required by this Franchise, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

14.13 No Third-Party Beneficiaries. Nothing in this Franchise is intended to confer third-party beneficiary status on any person other than the parties to this Franchise to enforce the terms of this Franchise.

Considered and approved this ___ day of _____, 2023 ____.

City of Dayton, WA

Signature: _____

Name/Title: _____

Accepted this ___ day of _____, 2023 ____, subject to applicable federal and State law.

Spectrum Pacific West, LLC
By Charter Communications, Inc., its Manager

Signature: _____

Name/Title: _____

INTEROFFICE MEMORANDUM

TO: MAYOR ZAC WEATHERFORD

FROM: DENA MARTIN

SUBJECT: RE-APPOINTMENT OF HISTORIC PRESERVATION COMMISSION MEMBER

DATE: JANUARY 26, 2023

Mayor Weatherford–

The term for current and active Historic Preservation Commission member Ginny Butler, who holds Seat 3, expires February 28, 2023. Serving since January, 1996, Butler has been a valuable asset to the Commission and the City and has contributed significantly to the discussions and decisions of the Historic Preservation Commission throughout her years of service.

Butler is willing to serve an additional three-year term and has requested that I convey her interest and willingness in serving on the Historic Preservation Commission for your approval.

Per DMC 5-18.16 reappointments are at the discretion of the mayor. It should be noted that there is also a vacant Seat 5 on the commission and interested individuals are encouraged to submit letters of interest.



Dena Martin, Planning Manager

I approve the reappointment of Ginny Butler to Seat 3 of the Dayton Historic Preservation Commission.

Mayor Zac Weatherford

Date

ORDINANCE NO. 1999

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CITY OF DAYTON, WASHINGTON, DECLARING A LOCAL EMERGENCY RELATED TO THE EXTENSIVE DAMAGE TO THE CITY OF DAYTON'S WASTEWATER TREATMENT PLANT CAUSED BY WINTER WEATHER CONDITIONS ON DEC 22, 2022.

WHEREAS, on December 22, 2022, winter weather conditions impacted the City with extended long periods of freezing temperatures.

WHEREAS the freezing temperatures has caused significant damage to The City of Dayton's Wastewater Treatment Plants skimmer arm gearbox and motor; and

WHEREAS, the freezing temperatures created a maintenance issue which has potential to create a risk for the City of Dayton's Wastewater Treatment Plant infrastructure, health safety and welfare of the community and environmental concerns; and

WHEREAS, the freezing temperatures event impacted the workings of the City of Dayton's equipment, infrastructure, and/or budgetary resources as necessary to protect the health, safety, and welfare of persons, property and environment up to an estimated \$500,000; and

WHEREAS, the conditions stated above constitute an emergency/disaster for the City of Dayton, necessitating activation of the Columbia County Comprehensive Emergency Management Plan and the utilization of emergency powers granted pursuant to RCW 36.40.180, 38.52.070(2), and 38.52.110(1); and

WHEREAS, the impacts to protect the health, safety and welfare of persons, property and environment created by the Dec 22, 2022 winter storm event may require State and/or Federal assistance.

NOW, THEREFORE, THE CITY COUNCIL OF CITY OF DAYTON, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. EMERGENCY DECLARATION. There is, and has existed since December 22, 2022, an emergency in the City of Dayton due to freezing temperatures, resulting in equipment failure at the City of Dayton's Wastewater Treatment Plant. This resolution affirms the emergency declaration of the Dayton City Council on December 22, 2022.

SECTION 2. MAYORAL AUTHORITY - CONTRACTING. Pursuant to the emergency declared in Section 1, the mayor, or designee, is hereby authorized to enter into contract

and incur obligations necessary to combat such emergency to protect the health and safety of persons, property, and the environment. The estimated cost for combating such an emergency is up to \$500,000.

SECTION 3. CONFIRMING EMERGENCY ACTIONS. The actions taken, and to be taken, by the Mayor, or designee, as are reasonably necessary to prevent or minimize the loss of life and property, are hereby confirmed.

SECTION 4. MAYORAL AUTHORITY - REQUESTING ASSISTANCE. The Mayor, or designee, is hereby authorized to request State and/or Federal assistance to the extent that the severity and magnitude of the disaster that is beyond the capability of City resources.

SECTION 5. SEVERABILITY. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the other remaining parts which shall remain in full force and effect.

SECTION 6. 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 AND APPROVED BY THE MAYOR OF THE CITY OF DAYTON, WASHINGTON, AT AN EMERGENCY MEETING THIS 14th DAY OF FEBRUARY 2023.

City of Dayton

Zac Weatherford, Mayor

ATTESTED/AUTHENTICATED:

Debra M Hays, City Clerk Treasurer

APPROVED AS TO FORM:

Quinn Plant, City Attorney

RESOLUTION NO. 1507

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, COLUMBIA COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE A PURCHASE AGREEMENT FOR LAND PURCHASE FROM DOUGLAS KRUEGER and MARJORY L. KRUEGER FOR A PORTION OF LOT 2, MCCA W SHORT PLAT, SW ¼ S OF HWY, EX ROAD & LOT 1.

**TOTAL ACREAGE ___not to exceed sixty-five (65) acres ___
FOR \$ _21,000.00 per acre_**

WHEREAS, the City Council of the City of Dayton has been duly elected and is authorized to enter into contracts pursuant to RCW 35A.12.190; and

WHEREAS, the City of Dayton has negotiated a sale price with landowner: Douglas & Marjory L. Krueger all of which is located in Columbia County, Washington on or near Rose Gulch Road and Highway 12 for fair market value of \$21,000.00 per acre plus closing costs for the acquisition of this land, which will be used for the City of Dayton's Waste Water Treatment Plant Upgrade Project.

WHEREAS the City Council finds and determines that entering into said Purchase Agreement with the Krueger's is in the best interest of the residents of the City of Dayton and will promote the general health, safety and welfare;

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

Section 1. Agreement. The Mayor of the City of Dayton, Washington, is hereby authorized to execute a Land Purchase Agreement with Douglas & Marjory L. Krueger,

Section 2. Implementation. That the Mayor, or designee, is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 3. Effective Date That this Resolution shall take effect and be in full force upon passage and signatures here on.

Dated and signed this ___14th___ day of February 2023

City of Dayton

Mayor Zac Weatherford

Attest/Authenticate:

Debra M Hays, City Clerk Treasurer

Approved as to form:

Quinn Plant, City Attorney

REAL ESTATE PURCHASE AND SALE AGREEMENT

PARTIES:

SELLER: Douglas Krueger and Marjory L. Krueger, husband and wife
605 Sorghum Hollow
Dayton, WA 99328
(hereinafter together referred to as "Seller")

PURCHASER: City of Dayton,
a Washington municipal corporation
111 S. 1st St.
Dayton, WA 99328
(hereinafter referred to as "Purchaser")

DATE: _____, 2023.

RECITALS:

A. Seller is the owner of certain real property in Columbia County, Washington, more particularly described on Exhibit "A" attached hereto and hereby incorporated by reference ("Real Property" herein).

B. Purchaser desires to purchase a portion of the Real Property to site wastewater facilities, including but not limited to wetlands, structures and other associated facilities as necessary to complete the project ("Project" herein). The portion to be acquired by Purchaser is located in the eastern one-half of the larger parcel and shall be determined after the survey to be completed by Purchaser as part of its due diligence as provided in Subsection 4.1 below, and shall be not less than 40 acres or more than 65 acres.

IN CONSIDERATION of the covenants herein contained and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **AGREEMENT TO SELL/PURCHASE; DESCRIPTION OF REAL PROPERTY:**

Subject to the terms of this Agreement, Seller shall sell to Purchaser and Purchaser shall purchase from Seller the Real Property defined as follows:

1.1. **Real Property:** “Real Property” shall mean the land, together with easements, rights of way, privileges and benefits appurtenant thereto, more fully described in Exhibit “A.” The parties authorize the Closing Agent to correct and conform the legal description to the legal description determined after the survey to be completed by Purchaser as part of its due diligence as provided in Subsection 4.1 below and identified on the updated preliminary commitment for title insurance issued after completion of the survey.

2. **PURCHASE PRICE; EARNEST MONEY; PAYMENT:**

The purchase price for the Real Property shall be calculated on a basis of \$21,000.00 per acre up to a maximum of 65 acres, resulting in a maximum purchase price for the Real Property of *One Million Three Hundred Sixty Five Thousand and 00/100 Dollars (\$1,365,000.00)*. The final determined purchase price shall be paid in collected funds at closing. Earnest money, if any, shall be credited against the purchase price. The final acreage subject to this Agreement shall be adjusted after the survey and other investigations to be completed by Purchaser as part of its due diligence as provided in Subsection 4.1 below. The final purchase price shall equal \$21,000.00 per acre for the Real Property, with any fraction of an acre prorated on that basis.

3. **CONDITION OF TITLE AND TITLE INSURANCE:**

The status of Seller’s title will be shown in a preliminary title commitment for a standard owner’s coverage title insurance policy issued by Title One, 5 East Main Street, Walla Walla, WA 99362, which preliminary title commitment will be ordered by Purchaser or Purchaser’s agent. Purchaser will pay the cost for such policy. Said preliminary title commitment shall have attached photocopies of all documents shown as encumbrances to Seller’s title. Title shall be free of all encumbrances or defects, except those approved by Purchaser, as set forth herein, and the following shall not be deemed encumbrances or defects: rights reserved in federal patents or state deeds; easements not inconsistent with Purchaser’s intended use; and reserved oil and/or mining rights (“Permitted Exceptions”). The condition of Seller’s title shall be one of the matters investigated by the Purchaser in the due diligence process described below in Subsection 4.1. The parties are aware of a farm lease and right of first refusal in favor of Just Farms, LLC. Seller shall be responsible for termination of the rights of Just Farms, LLC under such farm lease and

right of first refusal. Encumbrances to be discharged by Seller shall be paid from Seller's funds at Closing. If Seller is not able to provide insurable title in accordance with this Agreement and Purchaser does not waive such exceptions to coverage that are not part of the Permitted Exceptions, the earnest money shall be refunded to Purchaser and this Agreement shall terminate and be of no force or effect, with the exception of Purchaser's obligation of reimbursement and indemnity as provided in Section 4 below. For example, if an easement inconsistent with Purchaser's intended use of the Real Property cannot be terminated or modified to remove such inconsistency, Purchaser would be entitled to refund of the earnest money and the right of termination as provided above. Promptly following Closing, Seller shall provide to Purchaser at Purchaser's expense a policy of title insurance pursuant to the preliminary title commitment, insuring title to the Real Property subject only to the Permitted Exceptions and other exceptions set forth herein, if any.

4. **CONTINGENCIES:**

This Purchase and Sale Agreement is subject to all the following conditions being satisfied on or before closing:

4.1 Completion by Purchaser of due diligence with respect to the suitability of the Real Property for the Project. Seller hereby grants Purchaser and its agents and contractors entry and access to the Real Property. Seller shall obtain its tenant's (Just Farms, LLC) consent and agreement to Purchaser and its agents and contractors entry and access to the Real Property as provided herein. During such right of entry and access, Purchaser may conduct, at its own expense, a full investigation of legal, title, acreage, boundaries, environmental, geotechnical, hydrological, cultural, and archaeological and other matters reasonably related to the suitability of the Real Property for the Project. Such investigation may include but not be limited to core samples, test pits and other samples. Purchaser shall restore the Real Property and improvements to reasonably the same condition they were in prior to Purchaser's entry on the Real Property and investigation of the Real Property. Purchaser shall reimburse Seller and Seller's tenant (Just Farms, LLC), according to their respective interest's, for any financial losses due to damage to crops caused by Purchaser or its agents or contractors and for any damage to land and improvements not purchased by Purchaser to the extent the same cannot be restored to reasonably the same condition they were in prior to Purchaser's entry on the

Real Property and investigation of the Real Property. Purchaser shall indemnify, hold harmless, and defend Seller from all claims, demands, judgments, fines, penalties, damages, liabilities, losses and expense of whatever kind or nature arising out of its performance of due diligence on the Real Property. If the results of such investigation are unsatisfactory in Purchaser's sole discretion, Purchaser may, at its option, elect to terminate this Agreement by giving Seller written notice of termination. In the event of termination by Purchaser under this subsection 4.1, the earnest money shall be refunded to Purchaser and this Agreement shall immediately terminate and be of no further force or effect, and without further obligation of any party, with the exception of Purchaser's obligation of reimbursement and indemnity as provided in this Section 4.

4.2 Approval by Columbia County, Washington, of any land use permits or approvals necessary for subdividing the portion of the Real Property to be acquired by Purchaser and for siting and construction of the Project, including but not limited to a Conditional Use Permit for the Project. Seller agrees to cooperate and execute all documents reasonably necessary in the application and process for obtaining such land use permits and approvals. Purchaser shall be responsible for all application and consultant fees and expenses in any way related to the application and process to obtain such land use permits and approvals and shall hold harmless the Seller from all such expenses. In the event Purchaser is unable to obtain all land use permits or approvals necessary for subdividing the portion of the Real Property to be acquired by Purchaser and for siting and construction of the Project, the earnest money shall be refunded to Purchaser and this Agreement shall immediately terminate and be of no further force or effect, and without further obligation of any party, with the exception of Purchaser's obligation of reimbursement and indemnity as provided in this Section 4.

4.3 The parties agreeing upon reasonable easements and buffers so that the parties uses of their respective parcels do not unreasonably impact the other parties operation and use of their parcel. The parties shall in good faith use their best efforts to agree upon the terms of such agreement.

5. **POSSESSION:**

Purchaser shall have possession of the Real Property upon closing; provided Seller's tenant (Just Farms, LLC,) shall have the right to continue to farm the Real Property and remove the crop planted in 2022 ("current crop"), subject to the terms of the Seller's

lease, provided the term of such lease and all rights of tenant shall terminate upon removal of the current crop. Seller shall indemnify, hold harmless, and defend Purchaser from all claims, demands, judgments, fines, penalties, damages, liabilities, losses and expense of whatever kind or nature arising out of the Seller's lease of the Real Property and Seller's tenant's possession of the Real Property. Purchaser shall in addition have a right of entry and access to the Real Property as provided in Subsection 4.1 above. Purchaser shall indemnify, hold harmless, and defend Seller from all claims, demands, judgments, fines, penalties, damages, liabilities, losses and expense of whatever kind or nature arising out of its entry or possession of the Real Property after closing and shall reimburse Seller and Seller's tenant, according to their respective interest's, for any financial losses due to damage to crops caused by Purchaser or its agents or contractors.

6. **COVENANTS, REPRESENTATIONS AND WARRANTIES:**

6.1. **Seller's Covenants.** Seller hereby covenants and agrees as follows:

6.1.1. Except as provided in Section 4 above, from the date of this Agreement through the closing date, the Seller shall not make any material alterations to the Real Property or to any of the licenses, permits, legal classifications or other governmental regulations relating to the Real Property, nor enter into any contract of sale, leases or agreements pertaining to the Real Property without the Purchaser's prior written consent.

6.1.2. During the contract period, Seller shall not voluntarily cause to be recorded any encumbrance, lien, deed of trust, easement or the like against the title to the Real Property without Purchaser's prior consent.

6.1.3. Seller shall in good faith use its best efforts to remove all disapproved exceptions within the preliminary title commitment.

6.1.4. During the contract period, Seller will operate and maintain the Real Property in a manner consistent with Seller's past practices relative to the Real Property and so as not to cause waste to the Real Property.

6.2. **Seller's Representations and Warranties.** Seller hereby makes the following representations and warranties to Purchaser, each of which shall be true on the date hereof and on the date of closing. Seller shall immediately provide Purchaser with written notice of any event which would make any representation or warranty set forth below incorrect or untrue, and upon receipt of such notice, Purchaser may elect to terminate this Agreement. Upon Purchaser's election to terminate, the earnest money shall be refunded

to Purchaser and this Agreement shall immediately terminate and be of no further force or effect, and without further obligation of any Party under the terms of this Agreement, with the exception of Purchaser's obligation of reimbursement and indemnity as provided in Section 4 above.

6.2.1. Seller has full power and authority to enter into and carry out the terms and provisions of this Purchase and Sale Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Seller necessary to confer such authority upon the persons executing this Purchase and Sale Agreement and such other documents have been, or will be, taken. Consummation of this transaction will not breach any material agreement to which Seller is a party. Purchaser shall have no obligation to pay any funds prior to, at, or following closing to any third party. Seller has good and marketable title to the Real Property and at closing such title shall be subject only to the encumbrances permitted by Purchaser.

6.2.2. Seller has not received any written notice from any governmental authorities or regulatory agencies that eminent domain proceedings for the condemnation of the Real Property are pending or threatened.

6.2.3. Seller has not received any written notice of pending or threatened investigation, litigation or other proceeding before a local governmental body or regulatory agency which would materially and adversely affect the Real Property.

6.2.4. Seller has not received any written notice from any governmental authority or regulatory agency that Seller's use of the Real Property is presently in violation of any applicable zoning, land use or other law, order, ordinance or regulation affecting the Real Property.

6.2.5. No special or general assessments have been levied against the Real Property except those disclosed in the preliminary title commitment and Seller has not received written notice that any such assessments are threatened.

6.2.6. Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

6.2.7. The Real Property is subject to no unrecorded leases, easements, encumbrances or other agreements affecting the Real Property except for the farm lease and right of first refusal in favor of Just Farms, LLC and as shown on the preliminary title commitment.

6.2.8. To the knowledge of Seller: (a) no hazardous substances, as the same may be defined by any applicable law or regulation, are, will be, or have been stored, treated,

disposed of or incorporated into, on or around the Real Property in violation of any applicable statutes, ordinances, or regulations; (b) the Real Property is in material compliance with all applicable environmental, health and safety requirements; and (c) any business heretofore operated on the Property has disposed of its waste in accordance with all applicable statutes, ordinances and regulations. Seller has no actual notice of any pending or threatened action or proceeding arising out of the condition of the Property or any alleged violation of environmental, health or safety statutes, ordinances or regulations.

6.3. **Purchaser's Representations.** Purchaser hereby makes the following representations to Seller, each of which shall be true on the date hereof and on the date of closing:

6.3.1. Purchaser has full power and authority to enter into and carry out the terms and provisions of this Purchase and Sale Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Purchaser necessary to confer such authority upon the persons executing this Purchase and Sale Agreement and such other documents have been, or will be, taken.

6.4. **Survival of Covenants.** The covenants, representations, and warranties contained in Section 6 of this Agreement shall survive the delivery and recording of the Deed from the Seller to the Purchaser.

7. **DATE OF CLOSING:**

The date of Closing of this purchase and sale transaction shall be no later than **twelve (12) months from the date of** mutual acceptance of this Agreement, **unless extended by mutual agreement of the parties.** Closing shall occur in the office Title One, 5 East Main Street, Walla Walla, WA 99362, or at such other location as may prove expedient. The parties shall deposit with the Closing Agent all instruments and documents and monies necessary to complete the purchase and sale of the Real Property, which will include but may not be limited to an Excise Tax Affidavit, Statutory Warranty Deed, and Closing Escrow Instructions.

8. **CLOSING COSTS:**

8.1. **Closing Escrow Fees:** The Purchaser shall pay all closing escrow fees.

8.2. **Real Estate Excise Tax:** Purchaser shall be responsible for payment of real estate excise tax on this transaction, if any.

8.3. **Title Insurance:** Purchaser shall be responsible for payment of the title insurance premium in connection with this transaction for the Real Property.

8.4. **Recording Fees:** Purchaser shall pay all recording fees related to this purchase and sale.

8.5. **Attorney Fees:** Each party shall pay its own attorney fees in connection with this transaction.

8.6. **Proration of Taxes:** All real and personal property taxes and assessments payable in the year of closing shall be prorated as of the date of Closing; provided that since the Purchaser does not desire to continue the classification or designation of the Real Property as Agricultural land for general tax purposes, Purchaser shall pay all compensating and additional tax due and payable at the time of sale as a result of such classification or designation being discontinued.

9. **THIRD PARTY RIGHTS:**

No party other than Purchaser and Seller, and their successors and assigns, shall have any right to enforce or rely upon this Agreement, which is binding upon and made solely for the benefit of said parties, their heirs, personal representatives, successors or assigns, and not for the benefit of any other party.

10. **EARNEST MONEY:**

Earnest money in the amount of \$5,000.00 shall be paid by Purchaser into escrow to the office of Title One upon mutual acceptance of this Agreement.

11. **GENERAL PROVISIONS:**

11.1. **Notices:** Notices under this Agreement shall be in writing and may be delivered (1) personally; (2) by U.S. mail, certified or registered; (3) by a nationally recognized overnight courier service; or (4) by facsimile transmission, if a facsimile number has been provided by the party receiving notice, with a copy to be sent by U.S. first class mail. Mailed notices shall be deemed effective on the third day after deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown above. Couriered notices shall be deemed delivered when the courier's records indicate that

delivery has occurred. Facsimile notices shall be effective when actually transmitted to the facsimile number provided. Either party may change its address for notices by written notice to the other.

11.2. **Attorney's Fees:** In the event of any dispute arising out of or relating to this Agreement, whether suit or other proceeding is commenced or not, and whether in mediation, arbitration, at trial, on appeal, in administrative proceedings or in bankruptcy (including without limitation any adversary proceeding or contested matter in any bankruptcy case), the prevailing party shall be entitled to its costs and expenses incurred, including reasonable attorney's fees.

11.3. **Documents:** Each party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement to carry out its provisions.

11.4. **Time of Essence:** Time is of the essence of each and every provision of this Agreement.

11.5. **Legal and Tax Implications:** This Agreement affects legal rights and obligations and will have tax implications. The parties recognize and acknowledge that each party has been represented by or had the opportunity to be represented separate legal and tax counsel during the negotiation of this Agreement.

11.6. **Covenants of Cooperation; Best Efforts to Close:** The parties agree to cooperate with each other and to execute such additional documents and instruments, including escrow instructions, as may be reasonably required to consummate the transaction contemplated hereby. The parties shall each use their best efforts to satisfy any expressed or implied condition precedent to closing. No party will unreasonably withhold any cooperation necessary to bring about the closing of the transaction contemplated hereby.

11.7. **Counterparts/Facsimile:** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile or digital transmissions of any signed original document, and retransmissions of any signed facsimile or digital transmissions, shall be the same as delivery of an original.

11.8. **Survival of agreements:** The representations, covenants, agreements, warranties and indemnifications of this Agreement shall survive closing, except as otherwise expressly stated.

12. **NO JOINT VENTURE:**

No party is the agent, partner, or joint venture partner of the other.

13. **ASSIGNABILITY:**

Neither party shall assign this Agreement, or any part thereof, without the prior written consent of the other party.

14. **WAIVER OF RECEIPT OF SELLER DISCLOSURE STATEMENT:**

Purchaser hereby expressly waives the receipt of the seller disclosure statement as provided in RCW 64.06.010(7), except for the following disclosures of the "Environmental" section of the seller disclosure statement:

ENVIRONMENTAL

- | | | | |
|------------------------------|-----------------------------|--------------------------|---|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> | A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> | B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> | C. Are there any shorelines, wetlands, floodplains, or critical areas on the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> | D. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> | E. Is there any soil or groundwater contamination? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> | F. Has the property been used as a legal or illegal dumping site? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> | G. Has the property been used as an illegal drug manufacturing site? |

[SIGNATURES ON FOLLOWING PAGE]

CITY OF DAYTON

By: _____
Zac Weatherford, Mayor

Dated: _____

ATTEST:

Debra M. Hays, City Clerk

Dated: _____

SELLER:

Douglas Krueger

Marjory L. Krueger

Dated: _____

EXHIBIT "A" – Legal Description

Lot 2 of short plat recorded October 19, 2017 in Book 13 of Surveys at page's 39-40, under Auditor's File No. 42035, records of Columbia County, Washington.
Situate in the County of Columbia, State of Washington.

Columbia County GIS

Published



Find address or place

