

ORDINANCE NO. 1945

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

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

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

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

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

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

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

SECTION 1. DEFINITIONS

For the purpose of this Franchise the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever required. The word "shall" be mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

1. **"City"** is the City of Dayton, Washington, a Non-Charter Optional Code City and municipal corporation of the State of Washington.
2. **"Easement"** shall be limited to Rights-of-Way owned or controlled by the City.
3. **"Facilities"** means any and all fiber optic line, equipment and related appurtenances in any way comprising a part of the System.
4. **"Force Majeure"** means any delays caused by reason of: (1) civil commotion; (2) riots; (3) Acts of God and nature, including but not limited to floods, earthquakes, ice storms and tornadoes; (4) strikes or labor

unrest; (5) the inability to secure materials; and (6) any other event or circumstances reasonably beyond the control of POCKETINET.

5. **"Franchise"** means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of the System in, on and under the City's Rights-of-Way.
6. **"Franchise Area"** shall mean the area within the City limits of the City of Dayton, Washington, including areas annexed during the term of this Franchise.
7. **"Rights-of-Way" or "Right-of-Way"** means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of the System. No reference in this Franchise to a "Right-of-Way" shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of the System, and POCKETINET shall be deemed to gain only those rights which the City has the right and power to give and only to the extent necessary to carry out the purposes of this Franchise.
8. **"System"** means the poles, wires, fiber optic lines and all necessary or desirable appurtenances for the purpose of a wholesale communications business in accordance with applicable law.

SECTION 2. FRANCHISE GRANTED

1. GRANT

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

2. TERM

The Franchise granted hereunder shall be for a term of then (10) years from and after the effective date of this ordinance, unless otherwise lawfully terminated in accordance with the terms of this Franchise. The parties shall begin negotiations to renew this franchise not later than six (6) months prior to the expiration of this franchise.

3. FRANCHISE SUBJECT TO OTHER LAWS

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

4. OTHER FRANCHISES

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

5. WAIVERS

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

6. FRANCHISE ACCEPTANCE; PRIOR FRANCHISE SUPERSEDED AND REPEALED

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

7. POLICE POWERS

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

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

SECTION 3. STANDARDS FOR USE OF RIGHT OF WAY

1. USES OF RIGHTS-OF-WAY

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

buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and POCKETINET shall have the authority to require such payment from such person in advance. Unless otherwise agreed, POCKETINET shall be given not less than fourteen (14) calendar days advance notice to arrange for such temporary wire changes.

G. Construction and Maintenance, Excavation:

- i. The route of any underground portions of the System shall be subject to review and approval by the City. Engineering plans for construction in Rights-of-Way shall be submitted to the City no later than twenty-one (21) days prior to construction.
- ii. Except in an emergency, POCKETINET shall comply with generally applicable City ordinances, policies and rules pertaining to notification when excavating pavement in any Right-of-Way.

H. Coordination of Placement of Manholes. POCKETINET shall coordinate the placement of its manholes, if any, with the affected City Departments.

I. Movement of Facilities During Emergencies. During emergencies, the City may move POCKETINET 's Facilities, but shall first make reasonable attempts to notify POCKETINET.

J. Payment of the City's Locate Costs. POCKETINET shall only pay for the City's locate costs that specifically relate to POCKETINET and so long as those costs are not already included in the permit fees. POCKETINET shall be required to obtain verifiable locates prior to any digging, trenching or excavation.

K. Acquisition of Facilities. Upon POCKETINET 's acquisition of Facilities in any Right-or-Way, or upon the addition or annexation of any area in which POCKETINET owns or operates any Facility, POCKETINET shall, at the City's request, submit to the City a statement describing all Facilities involved, whether authorized by the Franchise, permit, license or other prior right, and specifying the location of all such Facilities to the extent POCKETINET has possession of such information. Such Facilities shall immediately be subject to the terms of this Franchise.

L. Discontinuing Use of Facilities. Whenever POCKETINET intends to discontinue using any Facility within the Rights-of-Way, POCKETINET shall submit for the City's approval a complete description of the Facility and the date on which POCKETINET intends to discontinue using the Facility. POCKETINET may remove the Facility or request that the City permit it to remain in place. Notwithstanding POCKETINET 's request that any such Facility remain in place, the City may require POCKETINET to remove the Facility from the Right-of-Way or modify the Facility as a condition of its remaining in place to protect the public health, welfare, safety or convenience, or otherwise serve, the public interest. POCKETINET shall complete such removal or modification in accordance with a schedule to be mutually agreed upon but in no event shall POCKETINET fail to remove said facility within ninety (90) days of written demand by the City. Until such time as POCKETINET removes or modifies the Facility, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, POCKETINET shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the Facility were in active use, and POCKETINET shall retain all liability for such Facility.

M. Hazardous Substances.

- i. POCKETINET shall comply with all applicable local, state and federal laws, statutes, regulations, ordinances and orders concerning hazardous substances relating to POCKETINET 's System in the Rights-of-Way.
- ii. POCKETINET shall maintain and inspect its System located in the Rights-of-Way. At any time, the City may inspect POCKETINET 's Facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to POCKETINET 's System.

- In removing or modifying POCKETINET's Facilities as provided in this Franchise, POCKETINET shall also remove and properly dispose of all residues of hazardous substances related thereto.
- iii. POCKETINET shall indemnify and hold the City harmless against any and all liability, claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by POCKETINET 's System in the Rights-of-Way.

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

2. USE OF FRANCHISE FACILITIES

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

3. JOINT USE OF POLES, TRENCHES AND CONDUITS

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

4. CHANGES FOR GOVERNMENTAL PURPOSES

- A. Whenever by reason of changes in the grade of any Right-of-Way or in the location or manner of construction any water pipe, gas pipe, sewer or other underground or overhead structure for any governmental purpose whatsoever, it shall be deemed necessary by the Director of Public Works of the City to remove, alter, change, adapt, or conform the underground or overhead facilities of POCKETINET, such alterations or changes shall be made as soon as practicable by POCKETINET and begin within thirty (30) days of notice from the City, without claim for reimbursement or damages against the City; provided, however, if said requirements impose a financial hardship upon POCKETINET, POCKETINET shall have the right to present alternative proposals for the City's consideration, provided, further if POCKETINET 's wires, cable, or other fixtures are placed within or attached to poles, conduits, or appliances owned or maintained by others, such as utility poles of a public utility pursuant to a pole attachment agreement, POCKETINET shall undertake such removal, alteration, change or adaption in cooperation with the public utility. Except for Franchise revocation or termination or System abandonment, the City shall not require POCKETINET to remove its facilities entirely from a Right-of-Way unless suitable alternatives are available for relocation at a reasonable cost. If POCKETINET fails or refuses to begin such

alterations or changes within such thirty (30) day period the City shall have the power to remove or abate the same at the expense of POCKETINET, all without compensation or liability for damages to POCKETINET.

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

5. WORK BY OTHERS

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

6. CONSTRUCTION PROVISIONS

- A. **Standards.** POCKETINET's System constructed within the City shall comply with all applicable federal, state and local laws.
- B. **Tree Trimming Removal.** To the extent permitted by law, POCKETINET shall have the authority after obtaining any consent legally required from any affected property owner to trim trees or other natural growth overhanging any of its cable System in the City so as to prevent branches from coming in contact with POCKETINET's wires, cables, or other equipment. POCKETINET shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction, operation or maintenance of their System. POCKETINET shall make reasonable efforts not to harm such trees or shrubs. Any pruning or removal of trees or shrubs in the City shall comply with practices outlined in the American National Standards Institute, Inc., (ANSI) Tree Care Operations - Tree, Shrub,

and Other Woody Plant Maintenance Standard Practices and with City Code provisions, including licensing and permitting provisions, and shall be done by a qualified, professional arborist.

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

risk to the public health and/or safety, if the City knows or has reason to believe part of POCKETINET 's System is buried in the area which is to be excavated, the City shall immediately notify POCKETINET of the City's intent to excavate. Such notification shall be done in such manner as may be reasonably calculated under the circumstances of the emergency to provide POCKETINET with an opportunity to identify the location of any part of its System buried within the proposed excavation site. If the City then damages the System while making the emergency excavation, so long as its actions are not wanton, the City and its officers, employees, and contractor shall have no liability for the damage.

- I. Location of Facilities.** POCKETINET shall be a member of the Northwest Utility Notification Center. After any City department, licensee or permittee notifies POCKETINET of a proposed street excavation, in accordance with the rules applicable to such a member, POCKETINET shall, at POCKETINET 's expense:
- i. Mark on the surface all of its locatable underground Facilities within the area of the proposed excavation;
 - ii. Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or
 - iii. Notify the excavator that POCKETINET does not have any underground Facilities in the vicinity of the proposed excavation.
- J. Restoration of Streets.** If POCKETINET excavates the surface of any Right-of-Way, POCKETINET shall be responsible for restoration of the Right-of-Way in accordance with generally applicable specifications and regulations of the City. The City may, after providing notice to POCKETINET, resurface any opening made by POCKETINET in the Right-of-Way, and the expense thereof shall be paid by POCKETINET. The City may, after providing notice to POCKETINET, remove and/or repair any work done by POCKETINET which, in the determination of the City, is inadequate or unsatisfactory. The cost thereof, including the costs of inspection and supervision, shall be paid by POCKETINET. All of POCKETINET's work under this Franchise, and this Section, in particular shall be performed and completed in strict compliance with all generally applicable rules, regulations and ordinances of the City.
- K. Reservation of City Rights.** Nothing in this Franchise shall prevent the City from constructing or establishing any public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of POCKETINET's System. However, if any of POCKETINET 's System unreasonably interferes with the construction, maintenance or repair of any public improvement, POCKETINET 's System shall be removed or replaced. Any and all such removal or replacement shall be at the expense of POCKETINET. Should POCKETINET fail to remove, adjust or relocate its Facilities by the date established by the City's written notice to POCKETINET, the City may affect such removal, adjustment or relocation, and the expense thereof shall be paid by POCKETINET.
- L. Building Codes.**
- i. POCKETINET shall strictly adhere to all building and zoning codes currently or hereafter in effect. POCKETINET shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any person. In the event of such interference, the City may require the removal or relocation of POCKETINET 's lines, cables, and other appurtenances from the property in question.
 - ii. All plans for aerial crossings near existing or proposed traffic signals, signs, flashers, or other traffic control devices shall be submitted to the City for approval. No crossings shall be permitted that obstruct traffic signals or other official traffic control devices.

M. Underground and overhead Construction.

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

N. Rights-of-way Occupancy.

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

O. Stop Work. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

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

SECTION 4. ADMINISTRATION AND REGULATION

1. TRANSFER OF OWNERSHIP OR CONTROL

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

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

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

1. RECOVERY OF COSTS

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

2. INSURANCE REQUIREMENTS

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

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

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

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

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

3. INDEMNITY

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

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

SECTION 6. ENFORCEMENT AND TERMINATION

1. FORFEITURE AND TERMINATION

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

2. FORECLOSURE

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

3. RECEIVERSHIP

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

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

4. BANKRUPTCY

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

5. REMOVAL OF SYSTEM

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

SECTION 7. MISCELLANEOUS PROVISIONS

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

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

PocketiNet Communications, Inc.
45 Terminal Loop Rd., Suite 210
Walla Walla, WA 99328

2. TIME LIMITS STRICTLY CONSTRUED

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

3. CUMULATIVE PROVISION

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

4. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

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

5. CAPTIONS

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

6. CONSTRUCTION OF AGREEMENT

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

7. NO JOINT VENTURE

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

8. ENTIRE AGREEMENT

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

9. ACTIONS OF THE CITY OR POCKETINET

In any action by the City or POCKETINET mandated or permitted under the terms hereof, both parties shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

10. SEVERABILITY, PREEMPTION, AND PRECEDENCE

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

11. VENUE

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

12. INTERPRETATION

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

13. ATTORNEYS FEES.

In the event that either party shall take action, whether judicial or otherwise, to enforce or interpret any of the provisions of this Franchise, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in such action, including reasonable attorneys' fees and costs, whether incurred in a court of law or otherwise.

14. EFFECTIVE DATE.

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

PASSED BY the City Council of the City of Dayton and approved by the Mayor of the City of Dayton, Washington, at a special meeting this 27th day of December, 2018.

City of Dayton



By: Craig George, Mayor

Authenticated/Attested By:



By: Trina Cole, City Clerk-Treasurer

Approved as to form:
Menke Jackson Berry, LLP



By: Quinn Plant, City Attorney

EXHIBIT A

PocketiNet Communications, Inc.

Agreement Acceptance Form

Date: 1-9-2019

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

Re: Ordinance No. 1945, adopted on December 27, 2018

To Whom It May Concern:

In accordance with and as required by Section 2 of City of Dayton Ordinance No. 1945, passed by the City Council and approved by the Mayor on 12/27/2018 (the "Ordinance"), PocketiNet Communications, Inc., hereby accepts the terms, conditions and obligations to be complied with or performed as under the Ordinance.

Sincerely,
PocketiNet Communications, Inc.

Marshall Keymer

By:

Title: VP of Operations

cc: Public Works Director, City of Dayton

EXHIBIT A

Resolution of the Board of Directors

Agreement of the Board of Directors

1-9-2019

10/15/2018
10/15/2018
10/15/2018

10/15/2018, adopted on December 12, 2018

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