CITY OF CLARKSTON
CITY COUNCIL AGENDA
829 5th Street
TUESDAY, May 27, 2014

1. **CALL TO ORDER:** 7:00 P.M.
2. **PLEDGE OF ALLEGIANCE:**
3. **ROLL:**
4. **AGENDA CHANGES:**
5. **APPROVAL OF MINUTES:**
   May 12, 2014, Regular Meeting

6. **COMMUNICATIONS:**
   A. From the Public (Please limit comments to 3 minutes)
   B. From the Mayor
   C. From Staff or Employees

7. **COMMITTEE REPORTS:**
   A. Finance – Audit Report on Current Bills
   B. Public Safety – no meeting
   C. Public Works – no meeting
   D. Administrative/Intergovernmental –
   E. Community Development – no meeting

8. **PUBLIC HEARING:**
   Public Hearing on the Extension of Moratorium on Recreational Marijuana Related Businesses

9. **UNFINISHED BUSINESS:**

   A. Ordinance No. 1522, Authorizing Acquisition and Financing of Fire Truck – 2nd Reading for Action

   B. Ordinance No. 1523, Authorizing Acquisition and Financing of Refuse Truck- 2nd Reading for Action

   C. Ordinance No. 1524, Extending Moratorium on Recreational Marijuana Related Businesses – 2nd Reading for Action

   D. Ordinance No. 1525, Establishing a Transportation Benefit District – 2nd Reading for Action

   E. Ordinance No. 1526, PocketInet Franchise – 2nd Reading for Action

10. **NEW BUSINESS:**

11. **COUNCIL COMMENTS**
12. **MEDIA QUESTIONS**
13. **EXECUTIVE SESSION - Negotiations**
14. **ADJOURN**

Time limits for addressing the council have been established by council direction. Presentations are limited to 15 minutes and public comments are limited to 3 minutes per person, per topic.

Individuals with disabilities may request reasonable accommodations by calling (509) 769-0131 at least three days prior to meeting.

CLARKSTON CITY COUNCIL MINUTES
May 12, 2014

COUNCIL:

☒ Beadles	☒ Nash
☒ Provost	☒ Baumberger
☒ Kolstad	☒ Blackmon
☒ Manchester	

STAFF:

☒ Chief Hastings ☒ Chief Cooper ☒ Clerk Storey ☒ City Attorney Grow
☒ PWD Martin

AGENDA CHANGES:

APPROVAL OF MINUTES: MOTION BY BEADLES/BLACKMON to approve the minutes of the April 28, 2014, Regular Meeting. Motion carried.

COMMUNICATIONS:

A. **From the Public:** Robin Spooner, 1232 Highland Ave, spoke regarding Ordinance No. 1524. She said she supports moving forward with I-502. She said this is an opportunity to bring business to the city and improve the city's resources. She challenged the council to do their job and enact the laws necessary to implement I-502. Councilmember Provost asked Spooner if she knew the vote in Asotin County. She said the County was about 49% in favor.

B. **From the Mayor:** Mayor Warren announced that the next council meeting will be on Tuesday, May 27 due to the holiday.

C. **From Staff:** Chief Cooper said that the PUD is planning to replace the water main along 13th Street prior to the City's resurfacing project. He said this is the perfect time to add and replace fire hydrants to improve service. There are seven hydrants needed to meet current recommendations for a total cost of $31,400. It is possible that the fire district will share in the cost for those that also serve their district. The PUD needs direction by May 19 to keep their project on line. MOTION BY PROVOST/ KOLSTAD to allocate up to $31,400 for the replacement of hydrants as proposed with the funding to come from capital improvement funds. Motion carried.

PWD Martin said that in conjunction with the 13th Street project is the need for some stormwater improvements. The corner of 13th & Maple is one in need of improvements. He asked for approval to spend an estimate of $5,000 to $6,000 from Stormwater capital reserves to replace the catch basin at that intersection. MOTION BY NASH/KOLSTAD to appropriate up to $6,000 from Stormwater Reserve for the catch basin on 13th Street. Motion carried.

Martin asked the press to let the public know that the 13th Street project is beginning on May 19.

COMMITTEE REPORTS:

Finance: Councilmember Provost reported the bills were reviewed and approved for payment. Total expenditures for May 12, 2014, of $827,706.02.MOTION BY PROVOST/BEADLES to approve the bills. Motion carried.

Public Safety: Councilmember Beadles reported on the May 6 meeting. Chief Cooper presented a resolution and an ordinance to authorize financing for the new fire engine.

Chief Cooper discussed the need for additional fire hydrants along 13th Street. It should be done during the resurfacing project.

Commander Smith reported on a possible grant that the Port is planning to apply for and the City could partner on. It would provide security cameras at the intersections of 2nd& Bridge and 15th& Bridge.

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Total cost is not known yet.

Public Works: Committee met on May 7. Councilmember Nash said that an ordinance to form a Transportation Benefit District will be on the agenda. A resolution and ordinance for the financing of the new sanitation truck will be on the agenda. A proposed franchise agreement with Pocketinet will be on the agenda. A change order granting a time extension for the WWTP project and an addendum to the engineering contract will be on the agenda. The new automated garbage system was discussed. Staff recommendation is to provide three sizes of containers for residents. Cost estimates are less than budgeted.

Admin Committee: Councilmember Manchester said committee met on May 12. There was no business to report.

Community Development: No meeting.

UNFINISHED BUSINESS:

NEW BUSINESS

A. **Resolution No. 2014-05, Reimbursement, Fire Truck Loan**

Clerk Storey explained the need for Resolution No. 2014-05 and 2014-06 and Ordinance no. 1522 and 1523. MOTION BY NASH/BEADLES to approve Resolution No. 2014-05. Motion carried.

B. **Resolution No. 2014-06, Reimbursement, Refuse Truck**

MOTION BY BEADLES/NASH to approve Resolution No. 2014-06. Motion carried.

C. **Ordinance No. 1522, Authorizing Acquisition and Financing of Fire Truck – 1st Reading**

Ordinance No. 1522 was read by title.

D. **Ordinance No. 1523, Authorizing Acquisition and Financing of Refuse Truck – 1st Reading**

Ordinance No. 1523 was read by title.

E. **Ordinance No. 1524, Extending Moratorium on Recreational Related Businesses – 1st Reading**

Ordinance No. 1524 was read by title. Councilmember Beadles commented that even though the voters approved I-502, those laws occasionally are struck down. He said that there are still logistical issues to decide and that the city does not receive any funding from the marijuana taxes. Councilmember Baumberger asked if the council could get a monthly update on the Planning Commission's progress. PW Martin said he will give those updates. Councilmember Kolstad asked what is taking so long. Martin said the Planning Commission has been doing their due diligence on this topic. He said it has been determined which zones are likely to be okayed for these businesses. However, there has been some concern about one certain area within an allowed zone and they are awaiting some legal answers. Martin said the next Planning Commission meeting is on May 19 at 6:00. Kolstad said he just wants to be sure there are legitimate reasons for the delay.

F. **Ordinance No. 1525, Establishing a Transportation Benefit District – 1st Reading**

Ordinance No. 1525 was read by title.

G. **FEMA Grant for Port Security**

Chief Hastings reported the Port of Clarkston has access to FEMA grants for Port security. They recently received a grant to place security cameras in the Port district. There is another grant opportunity that the city could partner on that would place cameras at the intersections of 2nd & Bridge and 15th & Bridge. Hastings said the existing cameras have been used to help solve some crimes. He feels cameras at these two interactions would be useful to the department. The cost of the cameras and the infrastructure would be covered by the grant except for about $2,000. There would

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be an ongoing cost of about $120 per month for the internet access for the cameras. The $2,000 could come from the Victims Fund and after the first year a cost of $120 per month for the internet. WSDOT may share the cost of the internet since both are on state highways. MOTION BY BEADLES/BAUMBERGER to authorize the grant application. Councilmember Blackmon asked if the cameras would be used for speeding citations. Hastings said are not the right kind of camera and would not be used for that. Motion carried.

H. Ordinance No. 1526, Pocketinet Franchise – 1st Reading

Ordinance No. 1526 was read by title.

I & J. Change Order for WWTP Project and Keller Associates Contract Addendum

PWD Martin said this change order will authorize an additional month to complete the project. Final completion would be July 11 if this is approved. As long as the project is complete before September 11 of this year, we will receive a reduced interest rate. The time extension will necessitate a contract addendum for Keller Associates for additional engineering expense. MOTION BY NASH/BEADLES to approve the addendum to the Keller contract. MOTION BY BEADLES/BAUMBERGER to approve Change Order No. 3. Motion carried.

COUNCIL COMMENTS:

MEDIA QUESTIONS:

ADJOURNMENT:

Meeting adjourned at 7:39 p.m.

Vickie Storey, City Clerk

Kathleen A. Warren, Mayor

Total Fund Expenditures, 5/12/14	CK #56437-56513	$550,064.02
Payroll, 4/30/14	Ck #56386-56436	$277,642.00

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ORDINANCE NO. 1522

AUTHORIZATION FOR THE ACQUISITION OF PERSONAL PROPERTY AND EXECUTION OF A FINANCING CONTRACT AND RELATED DOCUMENTATION RELATING TO THE ACQUISITION OF SAID PERSONAL PROPERTY.

WHEREAS, The City of Clarkston (the City) has executed a Notice of Intent to the Office of State Treasurer, in the form attached hereto as Annex 1 (the "NOI"), in relation to the acquisition of and the financing of the acquisition of the Property, as defined below, under the provisions of RCW CH 39.94; and

WHEREAS, it is deemed necessary and advisable by the City Council of the City of Clarkston that the City acquire the equipment and/or personal property identified on Annex 1 attached hereto ("Property"); and

WHEREAS, it is deemed necessary and advisable by the City Council of the City of Clarkston that the City enter into a Local Agency Financing Contract with the Office of the State Treasurer, in the form attached hereto as Annex 2 (the "Local Agency Financing Contract"), in an amount not to exceed $216,000, in order to acquire the property and finance the acquisition of the property and related financing costs;

WHEREAS, the City will undertake to acquire the property on behalf of and as agent of the Washington Finance Officers Association (the "Corporation") pursuant to the terms of the Local Agency Financing Contract, and in accordance with all applicable purchasing statutes and regulations applicable to the City; and

WHEREAS, the City desires to appoint the individuals set forth in Annex 3 as the representatives of the City in connection with the acquisition of the Property and execution of the Local Agency Financing Contract (each an "Authorized Agency Representative");

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Clarkston as follows:

Section 1. The individuals holding the offices or positions set forth in Annex 3 are each hereby appointed as a representative of the City of Clarkston in connection with the acquisition of the Property and execution of the Local Agency Financing Contract and all other related documents. A minimum of one Authorized Agency Representatives shall be required to execute any one document in order for it to be considered duly executed on behalf of the Local Agency.

Section 2. The form of the Local Agency Financing Contract attached hereto as Annex 2 is hereby approved and the Authorized Agency Representatives are hereby authorized and directed to execute and deliver the Local Agency Financing Contract, in an amount not to exceed $216,000.00 and in substantially the form attached hereto with such changes as may be approved by the Authorized Representatives for the acquisition

of the Property and financing of the acquisition of the property and related financing costs.

Section 3. The City of Clarkston hereby authorizes the acquisition of the property as agent of the Corporation in accordance with the terms and provisions of the Local Agency Financing Contract.

Section 4. The Authorized Representatives are hereby authorized to execute and deliver to the Office of State Treasurer all other documents, agreements and certificates, and to take all other action, which they deem necessary or appropriate in connection with the financing of the property, including, but not limited to, any amendment to the NOI and agreements relating to initial and ongoing disclosure in connection with the offering of securities related to the financing.

Section 5. This ordinance shall become effective immediately upon its passage. PASSED by the City Council of the City of Clarkston, Washington, at a regular meeting thereof held this 27th day of May, 2014

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[S E A L]

APPROVED:

_____

Kathleen A. Warren, Mayor

ATTEST:

_____

Vickie Storey, City Clerk

Certificate of Authorizing Ordinance

I, the undersigned, Clerk/Treasurer of the City of Clarkston (the "Local Agency"), DO HEREBY CERTIFY:

1. That the attached Ordinance No. 1522 (herein called the "Ordinance") is a true and correct copy of an Ordinance of the Local Agency adopted at a regular meeting of the City Council held on the 27th day of May, 2014, and duly recorded in my office;

2. That said meeting was duly convened and held in all respects in accordance with law; and to the extent required by law, due and proper notice of such meeting was given; that a quorum of the Council was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the adoption/ of the Ordinance;

3. That all other requirements and proceedings incident to the proper adoption of the Ordinance have been duly fulfilled, carried out and otherwise observed;

4. That the Ordinance remains in full force and effect and has not been amended, repealed or superseded; and

5. That I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand as of this ___ day of May, 2014.

[SEAL]

_____

Vickie Storey, City Clerk

ORDINANCE NO. 1523

AUTHORIZATION FOR THE ACQUISITION OF PERSONAL PROPERTY AND EXECUTION OF A FINANCING CONTRACT AND RELATED DOCUMENTATION RELATING TO THE ACQUISITION OF SAID PERSONAL PROPERTY.

WHEREAS, The City of Clarkston (the City) has executed a Notice of Intent to the Office of State Treasurer, in the form attached hereto as Annex 1 (the "NOI"), in relation to the acquisition of and the financing of the acquisition of the Property, as defined below, under the provisions of RCW CH 39.94; and

WHEREAS, it is deemed necessary and advisable by the City Council of the City of Clarkston that the City acquire the equipment and/or personal property identified on Annex 1 attached hereto ("Property"); and

WHEREAS, it is deemed necessary and advisable by the City Council of the City of Clarkston that the City enter into a Local Agency Financing Contract with the Office of the State Treasurer, in the form attached hereto as Annex 2 (the "Local Agency Financing Contract"), in an amount not to exceed $235,000, in order to acquire the property and finance the acquisition of the property and related financing costs;

WHEREAS, the City will undertake to acquire the property on behalf of and as agent of the Washington Finance Officers Association (the "Corporation") pursuant to the terms of the Local Agency Financing Contract, and in accordance with all applicable purchasing statutes and regulations applicable to the City; and

WHEREAS, the City desires to appoint the individuals set forth in Annex 3 as the representatives of the City in connection with the acquisition of the Property and execution of the Local Agency Financing Contract (each an "Authorized Agency Representative");

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Clarkston as follows:

Section 1. The individuals holding the offices or positions set forth in Annex 3 are each hereby appointed as a representative of the City of Clarkston in connection with the acquisition of the Property and execution of the Local Agency Financing Contract and all other related documents. A minimum of one Authorized Agency Representatives shall be required to execute any one document in order for it to be considered duly executed on behalf of the Local Agency.

Section 2. The form of the Local Agency Financing Contract attached hereto as Annex 2 is hereby approved and the Authorized Agency Representatives are hereby authorized and directed to execute and deliver the Local Agency Financing Contract, in an amount not to exceed $235,000.00 and in substantially the form attached hereto with such changes as may be approved by the Authorized Representatives for the acquisition

of the Property and financing of the acquisition of the property and related financing costs.

Section 3. The City of Clarkston hereby authorizes the acquisition of the property as agent of the Corporation in accordance with the terms and provisions of the Local Agency Financing Contract.

Section 4. The Authorized Representatives are hereby authorized to execute and deliver to the Office of State Treasurer all other documents, agreements and certificates, and to take all other action, which they deem necessary or appropriate in connection with the financing of the property, including, but not limited to, any amendment to the NOI and agreements relating to initial and ongoing disclosure in connection with the offering of securities related to the financing.

Section 5. This ordinance shall become effective immediately upon its passage. PASSED by the City Council of the City of Clarkston, Washington, at a regular meeting thereof held this 27th day of May, 2014

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[S E A L]

APPROVED:

_____

Kathleen A. Warren, Mayor

ATTEST:

_____

Vickie Storey, City Clerk

Certificate of Authorizing Ordinance

I, the undersigned, Clerk/Treasurer of the City of Clarkston (the "Local Agency"), DO HEREBY CERTIFY:

1. That the attached Ordinance No. 1523 (herein called the "Ordinance") is a true and correct copy of an Ordinance of the Local Agency adopted at a regular meeting of the City Council held on the 27th day of May, 2014, and duly recorded in my office;

2. That said meeting was duly convened and held in all respects in accordance with law; and to the extent required by law, due and proper notice of such meeting was given; that a quorum of the Council was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the adoption/ of the Ordinance;

3. That all other requirements and proceedings incident to the proper adoption of the Ordinance have been duly fulfilled, carried out and otherwise observed;

4. That the Ordinance remains in full force and effect and has not been amended, repealed or superseded; and

5. That I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand as of this ___ day of May, 2014.

[SEAL]

_____

Vickie Storey, City Clerk

ORDINANCE NO. 1524

AN ORDINANCE of the City Council of the City of Clarkston, Washington, extending the moratorium imposed by Ordinance 1515 with respect to the acceptance or processing of applications, or issuance of permits, and approvals, and uses or activities associated with the producing, processing, or retailing of marijuana and Marijuana-infused products.

WHEREAS City of Clarkston issued a moratorium on the production, processing and retail sales of recreational marijuana and marijuana infused products in order to study the issues associated with the same on the 25th day of November, 2013, pursuant to Ordinance 1515 to the City of Clarkston, and

WHEREAS, the Council finds that continuing the moratorium for an additional six months to allow additional time to study the issues set forth in Ordinance 1515, including the issue of zoning within the City of Clarkston, and, without an extension of the moratorium a potential for adverse impact on the City and its citizens may arise; and

WHEREAS, the City is still in the process of developing appropriate zoning, land use regulations, business license regulations, and other appropriate regulations to address the production, processing, and retailing, sales of recreational marijuana and marijuana-infused products; and

WHEREAS, the City needs more time to study the land use impacts of these types of Facilities\premises and the various development standards that should be considered to Mitigate these impacts before adoption of any City regulations and/or acceptance of applications and issuance of any permits or licenses; and

WHEREAS, the Council finds that continuing the moratorium for an additional six months to allow additional study regarding the zoning and other issues set forth in Ordinance 1515, with respect to the acceptance or processing of applications, or issuance of permits, and approvals, and uses or activities associated with the producing, processing, or retailing of marijuana and marijuana-infused products.

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

Section One. Zoning Moratorium extended. The City Council adopts the above recitations as findings of fact justifying the extension the Moratorium set forth in Ordinance 1515, and may supplement these findings of fact before or immediately after the public hearing on this moratorium. The moratorium shall remain in effect until November 30, 2014 unless amended or repealed by law prior to that date.

Section 2.0 – Permanent Regulations. The City Council directs the staff to prepare draft permanent land use regulations and rules regarding the acceptance, processing of applications, or issuance of permits and approvals, and uses or activities associated with the producing, processing, or retailing of marijuana and marijuana-infused products as well as the zoning deemed necessary to comply with state law to the Planning Commission for review and recommendation to the City Council no later than September 25, 2014 so that final enactment of the rules and regulations regarding the same may be enacted prior to the expiration of this ordianance..

_____
Mayor

Approved as to Form

_____
City Attorney

_____
City Clerk

ORDINANCE 1525

AN ORDINANCE OF THE CITY OF CLARKSTON, WASHINGTON, AMENDING THE CLARKSTON MUNICIPAL CODE TO ENACT A NEW CHAPTER 12.01 ENTITLED CLARKSTON TRANSPORTATION BENEFIT DISTRICT, ESTABLISHING A TRANSPORTATION BENEFIT DISTRICT, SPECIFYING THE BOUNDARIES FOR THE TRANSPORTATION BENEFIT DISTRICT, AND SPECIFYING THAT FUNDS GENERATED BY THE DISTRICT MUST BE USED FOR THE MAINTENANCE AND PRESERVATION OF EXISTING TRANSPORTATION IMPROVEMENTS

WHEREAS, the City Council of the City of Clarkston has the responsibility for the improvement, maintenance, protection and operation of public ways within the corporate limits of the City pursuant to RCW 35A.11.020, Chapter 35A.47 RCW; and the Constitution of the State of Washington, and

WHEREAS, the improvement, maintenance, protection and operation of public ways requires preservation of existing transportation improvements to avoid both failure and deterioration as well as funding for system improvements and economic development; and

WHEREAS, the City has limited transportation funding available for necessary transportation preservation, maintenance and improvements; and

WHEREAS, the funding dedicated for the preservation and maintenance of the City's transportation infrastructure has been dramatically reduced due to the passage of initiatives and reductions in available state and federal funds for infrastructure improvements; and,

WHEREAS, while dedicated revenues have decreased, the ongoing annual costs to preserve, maintain, and improve the City's transportation infrastructure continue to rise leaving the City in an uncertain and unstable position for providing adequate maintenance and improvement of the transportation system; and

WHEREAS, Chapter 36.73 RCW provides for the establishment of transportation benefit districts and for the levying of additional revenue sources for transportation improvements within the District that are consistent with existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels; and

WHEREAS, RCW 35.21.225 authorizes the City Council to establish a transportation benefit district subject to the provisions of Chapter 36.73 RCW; and

WHEREAS, the City desires to form a Transportation Benefit District which includes the entire City of Clarkston as the boundaries currently exist or as they may exist following future annexations; and

WHEREAS, the City provided notice of and conducted the public hearing on March 10, 2014, regarding the proposed establishment of a Transportation Benefit District in accordance with RCW 36.73.050; and

WHEREAS, the City Council of the City of Clarkston finds it to be in the best interests of the City to establish a citywide Transportation Benefit District for the preservation and maintenance of the City's transportation infrastructure consistent with Chapter 36.73 RCW, to protect the City's long-term investments in that infrastructure, to reduce the risk of transportation facility failure, to improve safety, to continue optimal performance of the infrastructure over time, to support economic development and to avoid more expensive infrastructure replacements in the future; and

WHEREAS, the City Council of the City of Clarkston shall be the governing body for the Transportation Benefit District acting in an ex officio and independent capacity;

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

Section 1. Purpose. The purpose of this Ordinance is to establish a Transportation Benefit District pursuant to RCW 35.21.225 and RCW 36.73. The City Council finds it is in the public interest to provide adequate levels of funding for the purposes of ongoing transportation improvements that preserve, maintain and as appropriate construct or reconstruct the transportation infrastructure of the City of Clarkston, consistent with Chapter 36.73 RCW.

Section 2. New City Code Chapter. The City of Clarkston adopts a new chapter to the Clarkston Municipal Code, entitled "Chapter 12.01 Clarkston Transportation Benefit District," which is set forth as follows:

Chapter 12.01

CLARKSTON TRANSPORTATION BENEFIT DISTRICT

Sections:

12.01.010 Establishing transportation benefit district.
12.01.020 Governing board.
12.01.030 Functions of the District.
12.01.040 Transportation improvements funded.
12.01.050 Dissolution of District.

12.01.010 Establishing transportation benefit district.

There is created a transportation benefit district to be known as the Clarkston Transportation Benefit District or "District" with geographical boundaries comprised of the corporate limits of the City, as they currently exist or as they may exist following future annexations.

12.01.020 Governing board.

A. The governing board of the transportation benefit district shall be the Clarkston City Council acting in an ex officio and independent capacity, which shall have the authority to exercise the statutory powers set forth in Chapter 36.73 RCW.

B. The treasurer of the transportation benefit district shall be the City Clerk/Treasurer.

C. The board shall develop a material change policy to address major plan changes that affect project delivery or the ability to finance the plan, pursuant to the requirements set forth in RCW 36.73.160(1).

D. The board shall issue an annual report, pursuant to the requirements of RCW 36.73.160(2).

12.01.030 Functions of the District.

A. The District board may authorize a vehicle tax fee of up to $20 per vehicle as provided for by RCW 82.80.140. Any expansion of the authorized purposes of the District shall be undertaken only after notice, hearing and adoption of an ordinance in accordance with RCW 36.73.050(2)(b) or a vote of the people pursuant to RCW 36.73.065(3).

B. When authorized by the voters pursuant to the requirements of Chapter 36.73, other taxes, fees, charges and tolls or increases in these revenue services may be assessed for the preservation, maintenance and operations of City streets. Additional transportation improvements may be added to the functions of the District upon compliance with the requirements of said chapter.

C. The Board shall have and exercise all powers and functions provided by Chapter 36.73 to fulfill the functions of the District.

12.01.040 Transportation improvements funded.

The funds generated by the transportation benefit district shall be used for transportation improvements that preserve, maintain, operate and/or improve the existing transportation infrastructure of the City, consistent with the requirements of Chapter 36.73 RCW. The funds may be utilized for any lawful purpose under the Chapter; but all funds raised through the Transportation Benefit District shall be expended only for such preservation, maintenance, operation and/or improvement in accordance with the provisions of Chapter 36.73 RCW as the same exists or is hereafter amended. The funds expended by the District shall preserve, maintain, operate, and/or improve the City's existing investments in the transportation infrastructure, reduce the risk of transportation facility failure, improve safety, continue the cost-effectiveness of the City's infrastructure investments, and continue the improvement of the transportation system. Additional transportation improvement projects may be funded only after compliance with the provisions of RCW 36.73.050(2)(b) following notice, public hearing and enactment of an authorizing ordinance.

12.01.050 Dissolution of District.

The transportation benefit district shall be automatically dissolved when all indebtedness of the District has been retired and when all of the District's anticipated responsibilities have been satisfied.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance shall become effective five (5) days after publication of a summary thereof.

PASSED by the Clarkston City Council at its regular meeting held on _____.

_____
Kathleen A. Warren, Mayor

ATTEST:

_____
Vickie Storey, City Clerk

APPROVED AS TO FORM:

_____
James Grow, City Attorney

ORDINANCE NO. 1526

CITY OF CLARKSTON, WASHINGTON

AN ORDINANCE OF THE CITY OF CLARKSTON, WASHINGTON, GRANTING A NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO POCKETINET COMMUNICATIONS, INC. AND OTHER MATTERS PROPERLY RELATING THERETO.

An Ordinance granting a franchise (the "Franchise") to PocketiNet Communications, Inc. a municipal corporation organized under the laws of the State of Washington (hereinafter referred to as "Grantee"), to locate, construct, operate and maintain poles, wires, fiber optics line, underground cables and appurtenances over, under, along and across all of Grantor's rights of way and public property in the City of Clarkston, State of Washington, and setting forth conditions accompanying the grant of Franchise; and,

WHEREAS, the City Council has determined that it is in the best interest of and consistent with the convenience and necessity of the City to grant a Franchise within the confines of the City to the Franchisee, and on the terms and conditions hereinafter set forth.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSTON, WASHINGTON, as follows:

SECTION I. 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" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

1. "City" is the City of Clarkston, Washington, a Non-Charter Code City and municipal corporation of the State of Washington.

2. "Franchisee" means PocketiNet Communications, Inc. the grantee of rights under this Franchise ordinance or its lawful successor, transferee or assignee.

3. "Easement" shall be limited to those Rights-of-Way owned or controlled by the City.

4. "Facilities" means any and all fiber optic line, equipment and related appurtenances in any way comprising a part of the System.

5. "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 the Franchisee.

6. "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.

7. "Franchise Area" shall mean the area within the City limits of the City of Clarkston, Washington, including areas annexed during the term of this Franchise.

8. "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 the Franchisee 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.

9. "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 II. FRANCHISE GRANTED

1. GRANT

A. Pursuant to RCW 35A.47.040, the City of Clarkston hereby grants to PocketiNet Communications 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 the Franchisee 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. PocketiNet Communications, Inc 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 twenty-five (25) 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 agreement.

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, the Franchisee 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 the Franchisee to perform any service, or shall permit the Franchisee to perform any service, or shall prohibit the Franchisee 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, the Franchisee shall notify the attorney for the City of the point of conflict believed 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. . Further, the granting of this Franchise does not give the grantee the right to anyway interfere, move, set aside, supplant or in any way interfere with grants or easements previously given to others over, on, above or below the same right of way.

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 the Franchisee 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. No waiver of any provisions of this Franchise by the City shall be effective unless authorized in writing by the City.

6. Franchise Acceptance; Prior Franchise Superceded and Repealed

A. Upon adoption of this Franchise and acceptance hereof by the Franchisee, the Franchisee 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. The Franchisee's signature at the end of this Franchise shall constitute compliance with this section.

B. By accepting the Franchise, the Franchisee: (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, the Franchisee 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 the Franchisee agrees to comply with all generally applicable laws and ordinances enacted by the City pursuant to such power that do not alter the Franchisee'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 the Franchisee 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.

8. Permits Required

In addition to this Franchise, in order for the Franchisee to be allowed to occupy or use the Rights-of-Way of the City, the Franchisee shall obtain all other required authorizations, certificates, licenses and permits, in accordance with federal, state and local law. The City shall not unreasonably withhold any permits requested by the Franchisee as determined by applicable law.

SECTION III. 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, Franchisee shall respect rights and property of the City and other authorized users of the Rights-of-Way. Disputes between the Franchisee 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**: The Franchisee's System shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of Rights-of-Way or other public property. The City shall have power at any time to order and require Franchisee to remove and abate any pole, wire, cable, or other structure that is dangerous to life or property, and in case Franchisee, 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 the Franchisee.

C. **Relocation of the Facilities:** Franchisee shall continuously provide the City a current map of the location of Franchisee'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, the Franchisee, upon reasonable notice by the City, shall begin removing and/or relocating as necessary, its poles, wires, cables, underground conduits, manholes and other fixtures at the Franchisee's expense, provided, if Franchisee'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, Franchisee shall undertake such removal or relocation in cooperation with the public utility. If Franchisee 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 the Franchisee.

D. **Interference with utilities:** The Franchisee 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 the Franchisee'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:** The Franchisee 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 the Franchisee shall have the authority to require such payment from such person in advance. Unless otherwise agreed, the Franchisee shall be given not less than fourteen (14) calendar days advance notice to arrange for such temporary wire changes.

G. **Construction and Maintenance, Excavation:**

1. The route of any underground portions of the system shall be subject to review and approval by the City. Engineering plans for construction in Rights-of-Way shall be submitted to the City prior to construction.

2. Except in an emergency, the Franchisee 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:** The Franchisee 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 the Franchisee's Facilities, but shall first make reasonable attempts to notify the Franchisee.

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

K **Acquisition of Facilities:** Upon the Franchisee's acquisition of Facilities in any Right-or-Way, or upon the addition or annexation of any area in which the Franchisee owns or operates any Facility, the Franchisee 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 the Franchisee has possession of such information. Such Facilities shall immediately be subject to the terms of this Franchise.

L. **Discontinuing Use of Facilities:** Whenever the Franchisee intends to discontinue using any Facility within the Rights-of-Way, the Franchisee shall submit for the City's approval a complete description of the Facility and the date on which the Franchisee intends to discontinue using the Facility. The Franchisee may remove the Facility or request that the City permit it to remain in place. Notwithstanding the Franchisee's request that any such Facility remain in place, the City may require the Franchisee 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. The Franchisee shall complete such removal or modification in accordance with a schedule to be mutually agreed upon but in no event shall Franchisee fail to remove said facility within ninety (90) days of written demand by the City. Until such time as the Franchisee 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, the Franchisee 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 the Franchisee shall retain all liability for such Facility.

M. **Hazardous Substances:**

1. The Franchisee shall comply with all applicable local, state and federal laws, statutes, regulations, ordinances and orders concerning hazardous substances relating to the Franchisee's System in the Rights-of-Way.

2. The Franchisee shall maintain and inspect its System located in the Rights-of-Way. At any time, the City may inspect the Franchisee's Facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to the Franchisee's System. In removing or modifying the Franchisee's Facilities as provided in this Franchise, the Franchisee shall also remove and properly dispose of all residue of hazardous substances related thereto.

3. The Franchisee 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 the Franchisee's System in the Rights-of-Way.

N. **Completion of Work by the City:** On failure of the Franchisee 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. The Franchisee shall pay to the City the reasonable costs of the work in the itemized amount reported by the City to the Franchisee within thirty (30) days after receipt of the itemized report.

2. USE OF FRANCHISEE 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 the Franchisee, providing that such uses do not unreasonably interfere with the operations of the Franchisee.

3. JOINT USE OF POLES, TRENCHES AND CONDUITS

A. The Franchisee 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 the Franchisee, upon reasonable terms and for just compensation. All of the Franchisee'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. The Franchisee may be required by the City to share trench space with another person or entity for the placement of facilities underground. Compensation to the Franchisee 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 GOVERMENTAL 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 the Franchisee, such alterations or changes shall be made as soon as practicable by the Franchisee 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 the Franchisee, the Franchisee shall have the right to present alternative proposals for the City's consideration, provided, further if Franchisee'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, Franchisee 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 Franchisee to remove its facilities entirely from a Right-of-Way unless suitable alternatives are available for relocation at a reasonable cost. If Franchisee 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 the Franchisee, all without compensation or liability for damages to the Franchisee.

B. In cases of emergency the City may require relocation of the Franchisee's facilities at the Franchisee'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 the Franchisee. 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 the Franchisee for any damage so occasioned but nothing herein shall relieve any other person or entity from the responsibility for damages to the facilities of the Franchisee.

B. In the event that the City subsequently authorizes someone other than the Franchisee 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 the Franchisee. In the event that the City shall close or abandon any Right-of-Way which contains existing facilities of the Franchisee, any conveyance of land within such closed or abandoned Right-of-Way shall be subject to the rights herein granted or heretofore obtained by Franchisee; provided, that the Franchisee may be ordered to vacate any land so conveyed if an alternate route is practicable and if the Franchisee 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 the Franchisee 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, the Franchisee shall not be bound to make any such changes until such other entity or person shall have undertaken, with good and sufficient bond, to reimburse the Franchisee for any costs, loss, or expense which will be caused by, or arise out of such change, alteration, or relocation of Franchisee's property; provided, however, that the City shall never be liable for such reimbursement.

6. CONSTRUCTION PROVISIONS

A. **Standards** The Franchisee's System constructed within the City shall comply with all applicable federal, state and local laws.

B. **Tree Trimming and Removal** To the extent permitted by law, the Franchisee 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 the Franchisee's wires, cables, or other equipment. The Franchisee 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 the System. The Franchisee 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** The City shall have the right, but not a duty, to inspect all construction and installation work performed by the Franchisee pursuant to this Franchise as it shall find necessary to ensure compliance by the Franchisee. Such inspection shall be in accordance with the provisions of this Franchise.

D. **Restoration of City Property** The Franchisee 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 the Franchisee'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 the Franchisee its usual and customary fees of general applicability for inspection of such restoration or replacement work. The Franchisee 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 the Franchisee 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 the Franchisee's expense. The Franchisee shall pay to the City the cost thereof, in the itemized amounts reported by the City to the Franchisee, within 30

days after receipt of such itemized report. Such payment shall not excuse a breach of the Franchise caused by the Franchisee's failure to commence, pursue or complete the required work.

E. **Restoration of Property** Whenever the Franchisee 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 the Franchisee at its expense. Further, the Franchisee 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, the Franchisee 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 the Franchisee's Cable System shall, regardless of who performs the construction, be and remain the Franchisee's responsibility.

G. **Joint Trenching and Boring** The Franchisee may make excavations in the Rights-of-Way for any Facility needed for the maintenance or extension of the Franchisee. Prior to doing such work, the Franchisee 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, the Franchisee 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, the Franchisee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of street cuts within the City. If the Franchisee reasonably anticipates that trenching will encounter tree roots, the Franchisee shall consult with the City prior to trenching.

H. **Emergency Repairs** In the event that emergency repairs are necessary to any part of its System, the Franchisee shall immediately notify the City of the need for such repairs. The Franchisee may initiate such emergency repairs, and shall apply for appropriate permits within seventy-two (72) hours after discovery of the emergency. The Franchisee 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 Franchisee's system is buried in the area which is to be excavated, the City shall immediately notify Franchisee 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 Franchisee 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** The Franchisee shall be a member of the Northwest Utility Notification Center. After any City department, franchisee, licensee, permittee notifies the Franchisee of a proposed street excavation, in accordance with the rules applicable to such a member, the Franchisee shall, at the Franchisee's expense:

1. Mark on the surface all of its locatable underground Facilities within the area of the proposed excavation;

2. Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or

3. Notify the excavator that the Franchisee does not have any underground Facilities in the vicinity of the proposed excavation.

J. **Restoration of Streets** If the Franchisee excavates the surface of any Right-of-Way, the Franchisee 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 the Franchisee, resurface any opening made by the Franchisee in the Right-of-Way, and the expense thereof shall be paid by the Franchisee. The City may, after providing notice to the Franchisee, remove and/or repair any work done by the Franchisee 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 the Franchisee. All of the Franchisee'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 the Franchisee's System. However, if any of the Franchisee's System unreasonably interferes with the construction, maintenance or repair of any public improvement, the Franchisee's System shall be removed or replaced.

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

L. BUILDING CODES

1. The Franchisee shall strictly adhere to all building and zoning codes currently or hereafter in effect. The Franchisee 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 and private property by any person. In the event of such interference, the City may require the removal or relocation of the Franchisee's lines, cables, and other appurtenances from the property in question.

2. 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**

1. **Preference for underground Installation.** In all sections of the City where the cables, wires, utilities or other like facilities are placed underground, the Franchisee 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, the Franchisee shall, convert its facilities to an

underground installation. If Franchisee's wire, cable, utilities or other facilities are to be placed underground in a common trench or bore shared by others, Franchisee shall share equally the expense of the trenching and/or boring in proportion to the number of joint users. The Franchisee shall pay for all cable, wire conduit, or facilities installed for Franchisee's own use. If the Franchisee 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.

2. **Overhead**. In areas of the City where electrical or telephone systems are installed on poles above ground, the Franchisee shall have the option of installing its System in like manner above ground or, alternatively, underground.

N. **RIGHTS-OF-WAY OCCUPANCY**

1. Nothing in this Franchise shall give the Franchisee the right to attach its Cable System to structures or poles owned by the City without consent of the City.

2. The Franchisee 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;

   (d) 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;

   (e) 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

   (f) Notify adjacent property owners, businesses, residents, and others specified by the City prior to construction and major maintenance projects.

3. The Franchisee 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.

4. Before beginning any excavation or other construction activity on a Right-of-Way which crosses or abuts any private property, the Franchisee 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, the Franchisee shall restore such property to not less than the City's standards.

5. The Franchisee shall locate, mark and map any of its installed System for the City at no expense to the City. The Franchisee 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. **Franchisee's Contractors** The Franchisee 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 the Franchisee which violates any provision of this Franchise shall be considered an act or omission of the Franchisee 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, the Franchisee 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 Franchisee activity or omission, the Franchisee 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, the Franchisee 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, the Franchisee 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 had copies and digital files in readable formats approved by the City of Clarkston, delivered on a DVD.

SECTION IV. 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. The Franchisee 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 the Franchisee. 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 the Franchisee 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 the Franchisee 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 the Franchisee 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, the Franchisee specifically agrees that any such transfers occurring without prior approval of the City Council shall constitute a violation of this Franchise by the Franchisee. 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 30 days of any transfer or sale and upon request, if approved or deemed granted by the City, the Franchisee 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 the Franchisee.

G. **Standards** The City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Franchisee 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 the Franchisee.

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 the Franchisee.

SECTION V. FINANCIAL AND INSURANCE REQUIREMENTS

1. RECOVERY OF COSTS

Franchisee shall be subject to all permit fees associated with 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, Franchisee shall pay such costs and expenses directly to the City.

2. INSURANCE REQUIREMENTS

A. Franchisee 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 Franchisee, its agents, representative or employees. Franchisee shall provide a copy of a Certificate of Insurance to the City for it

inspection prior to the adoption of this franchise ordinance, and such insurance certificate shall evidence a policy of insurance that includes:

1. Automobile Liability insurance with limits no less than $1,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and

2. 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.

3. 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.

4. 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 the Franchisee.

The insurance policies obtained by Franchisee 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 Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. Franchisee's insurance shall be primary insurance as respects the City, it officers, officials, employees, agents and volunteers. Any insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of Franchisee'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**. The Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by the Franchisee or to limit the liability of the Franchisee 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

The Franchisee 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 the Franchisee 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 or damages as a result of any act or omission by the Franchisee in the operation of the System, the Franchisee, upon notice to it by the City, shall defend the City against the action. The Franchisee 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 the Franchisee in the operation of the System, the Franchisee 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. The Franchisee shall pay all expenses incurred by the Franchisee 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.

The Franchisee 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 the Franchisee 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 VI. 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 the Franchisee hereunder in the event of a material breach of this Franchise's terms and conditions. A material breach by Franchisee shall include, but shall not be limited to the following:

1. 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;

2. Attempt to evade any material provision of the Franchise or practice any fraud or deceit upon the City;

3. The Franchisee 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 the Franchisee. The Franchisee 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 the Franchisee comply with any such provision, rule, order, or determination under or pursuant to this Franchise. If the violation by the Franchisee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City Council may appoint a hearing examiner to take under consideration the issue of termination of the Franchise. The City shall cause to be served upon the Franchisee, 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 the Franchisee has occurred. The Franchisee 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 the Franchisee was the fault of the Franchisee and within its control, the City Council or hearing examiner, if appointed, shall determine if the violation can be cured. If the violation cannot be cured, the Franchise may be forfeited or terminated. If the violation can be cured, the City Council or hearing examiner, if appointed, shall specify the action or actions to be taken by the Franchisee to cure the violation and set a compliance date. If there is no compliance within the period stated, then the City Council may terminate the Franchise. Such determination shall be subject to judicial review in the Superior Court.

2. FORECLOSURE

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

shall have the right to sell its physical plant to a subsequent franchisee, subject to City approval as provided in SECTION IV, Section 2, in which case said plant need not be removed and the Franchisee shall continue to operate the System during such interim period prior to the sale. If the Franchisee 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 the Franchisee's expense. Any property of the Franchisee 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 VII. MISCELLANEOUS PROVISIONS

1. Notices

All notices from the Franchisee to the City pursuant to this Franchise shall be to the Mayor, City of Clarkston, 829 5th Street, Clarkston, Washington, 99403, or to another person as designated by the City. All notices to the Franchisee pursuant to this Franchise shall be sent to:

PocketiNet Communications, Inc. 45 Terminal Loop Rd., Walla Walla, WA 99362 Attn: President or to such other person or address designated by the Franchisee. The Franchisee shall maintain with the Finance Director, throughout the term of the Franchise, an address for service of notices by mail. The Franchisee shall also maintain with the City, an office address and telephone number for the conduct of matters related to this Franchise during normal business hours. A new address and telephone number of the office shall be furnished to the City Treasurer within fifteen (15) days after any change thereof.

2. Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by the Franchisee, such time shall be deemed to be of the essence, and any failure of the Franchisee 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 the Franchisee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of force majeure, the Franchisee's performance shall be excused during the force majeure occurrence and the Franchisee 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 the Franchisee 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 the Franchisee 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 rights or remedies at a future time. Further, either the City or the Franchisee may seek any legal or equitable relief allowed by law provided that, if both parties agree, the City and the Franchisee may seek methods of alternative dispute resolution.

4. Compliance with Federal, State, and Local Laws.

The Franchisee, its contractors, subcontractors, employees, and agents shall comply with all applicable federal, state, and local laws, rules, and regulations issued pursuant thereto. The

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

5. Captions

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

6. Construction of Agreement

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

7. No Joint Venture

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

8. Entire Agreement

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

9. Actions of the City or the Franchisee

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

10. Severability, Preemption, and Precedence

A. If any section, subsection, sentence, clause, phrase, provision, or portion of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or any state or federal regulatory agency having jurisdiction thereof, the remainder of this Franchise shall not be affected thereby, and each remaining section, subsection sentence, clause, phrase, provision, and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law.

B. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or Franchisee, and any amendments to this Franchise negotiated as a result of such provision being preempted shall no longer be of any force or effect with respect to that provision.

11. Venue

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

12. Interpretation

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

13. Attorney's Fees.

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

14. Effective Date

This Ordinance shall be in full force and effect five (5) days after publication and acceptance by the Franchisee as provided by law.

DATED this _____ day of May, 2014.

CITY OF CLARKSTON
Asotin County, Washington

Attest:

_____
Kathleen A. Warren, Mayor

_____
Vickie Storey, City Clerk

POCKETINET COMMUNICATIONS, INC

_____

Marshall Keymer, VP of Operations

APPROVED AS TO FORM:

_____

James Grow, City Attorney
For the City of Clarkston