RESOLUTION No. 2025/26-21
City of Dayton, Oregon

A Resolution Approving a Franchise Agreement with Hunter Communications and Technologies LLC

WHEREAS, the City of Dayton's Franchise Agreement with Hunter Communications to construct, operate, and maintain its telecommunication network serving its customers has expired; and

WHEREAS, it is in the public interest to renew the expired Franchise Agreement;

The City of Dayton resolves as follows:

1) **THAT** the Franchise Agreement with Hunter Communications, attached as Exhibit A, is approved.

2) **THAT** the City Manager is authorized to sign the Franchise Agreement in Exhibit A

3) **THAT** this resolution shall become effective immediately upon adoption.

ADOPTED this 1st day of June 2026.

In Favor: Frank, Hildebrandt, Hover, Mackin, Pederson, Teichroew

Opposed:

Absent: Wilkins

Abstained:

______________________________ ______________________

Annette Frank, Mayor **Date Signed**

ATTEST:

______________________________ ______________________

Rocio Vargas, City Recorder **Date of Enactment**

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Franchise") is made and entered into by and between the City of Dayton, an Oregon municipal corporation, ("City") and Hunter Communications ("Franchisee").

RECITALS

1. Pursuant to Federal law, State statutes, and City Charter and local ordinances, the City is authorized to grant non-exclusive franchises to occupy the public rights-of-way, as defined by Dayton Municipal Code ("DMC") Chapter 6.11, in order to construct, operate, and maintain telecommunication systems within the municipal boundaries of the City.

2. Franchisee has been operating within the right of way under a franchise granted pursuant to Ordinance 624, which franchise, as extended, expires on July 1, 2025, and would like to continue to provide telecommunications services within the City under the terms and conditions set forth in this Franchise.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. DEFINITIONS

Unless otherwise defined in this Franchise, the capitalized terms used in this Franchise shall have the meanings provided in DMC Chapter 6.11.

2. GRANT OF AUTHORITY

The City grants Franchisee the non-exclusive right and franchise to occupy the Public Rights-of-Way for the purpose of Construction, use, operation, and maintenance of a Telecommunication System solely to provide Telecommunications Service and internet access services (together, the "Service") for a period of five (5) years from and after the Effective Date of this Franchise (the "Term"), except as set forth below. This Franchise does not convey any right, title or interest in the Public Rights-of-Way; it is a grant to use and occupy the Public Rights-of-Way for the limited purposes and term stated in this Franchise. This Franchise does not authorize the provision of services other than the Service and does not authorize the placement or installation of cell towers, antennas, or wireless facilities in the Public Rights-of-Way. Unless otherwise authorized in writing by the City, Franchisee may not install any new poles in the Public Rights-of-Way.

3. AUTHORITY NOT EXCLUSIVE

This Franchise and the grant of authority conferred herein are not exclusive. The City reserves the right to grant rights to others to use the Public Rights-of-Way in the City during the Term. The City may also do any work the City finds desirable on, over or under any Public Rights-of-Way. The Franchisee shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. This Franchise does not confer on Franchisee any right or privilege to use or occupy any City Property or property of any other Person or entity. This grant of authority shall not be construed as a limitation on the City in constructing, installing, maintaining or operating facilities for the provision of Service.

4. PERFORMANCE; CONSIDERATION

4.1 During the term of this Franchise, the Franchisee agrees to comply with all lawful terms and conditions of DMC Chapter 6.11, as amended from time to time, the provisions of which are incorporated herein as though fully set forth. Franchisee agrees to comply with any other generally applicable ordinances, codes, rules and regulations of the City and applicable provisions of State and federal law.

4.2 As consideration for the use of the Public Rights-of-Way, Franchisee shall remit to City a franchise fee equal to seven percent (7%) of the Franchisee's gross revenues earned or derived from the operation of its Telecommunications Facilities and provision of Service within the City. "Gross revenues" shall not include: (a) any tax, fee or assessment of general applicability imposed directly on subscribers and collected by Franchisee from subscribers for pass-through to the entity imposing the fee or tax; (b) unrecovered bad debt and (c) any amounts expressly excluded under applicable law in effect at the beginning of the quarter for which payment is due. In the event applicable law changes, the parties shall meet and negotiate in good faith to amend the Franchise to expand the revenue base and/or amount on which the franchise fee or privilege tax is applied, provided that such amount is materially consistent with the same percentage charged to franchisees of the City providing Service to the extent permitted by applicable law.

4.3 The franchise fee shall be payable quarterly on or before forty-five (45) days after the end of the preceding quarter, continuing through the term of this Franchise. Payments not received by the 45th day of each quarter will be assessed interest at the rate of one and one-half percent (1-1/2%) per month until paid. City shall have the right to conduct or cause to be conducted, an audit of gross revenues as defined herein for the purpose of ascertaining whether Franchisee's franchise fee payments have met the requirements of this Franchise. Any difference of payment due to the City following audit shall be payable within thirty (30) days after written notice to the Franchisee.

4.4 Nothing in this Franchise shall be construed to exempt the Franchisee from any license, occupation, franchise or excise tax or assessment which is or may be hereafter lawfully imposed.

5. CHANGE OF LAW; AMENDMENT OF FRANCHISE

5.1. It is the intent of the parties that this Franchise may be amended from time to time to conform to any changes in the controlling federal or State law or other changes material to this Franchise and binding on the parties. Each party agrees to bargain in good faith with the other party concerning such proposed amendments. This Franchise may be amended or terminated by the mutual consent of the parties and their successors-in-interest.

5.2. To the extent any lawful City rule, ordinance or regulation, including any amendment to the provisions of DMC Chapter 6.11, is adopted on a jurisdiction-wide basis and is generally imposed on similarly situated persons or entities, the rule, ordinance or regulation shall apply without need for amendment of this Franchise. City shall provide Franchisee notice of any such change in law prior to its adoption.

6. TREE TRIMMING

6.1. Upon the express written permission of the City, Franchisee may trim trees or other vegetation owned by the City or encroaching upon the Public Rights-of-Way to prevent branches or leaves from touching or otherwise interfering with Franchisee's Telecommunications Facilities. All trimming or pruning shall be at the sole cost of Franchisee and under the supervision of the City.

6.2. The Franchisee may contract for said trimming or pruning services with any Person approved by the City.

7. REPORTS

7.1 Within thirty (30) days of receipt, Franchisee shall submit to City copies of all decisions, orders, and judgments by any federal, State and local court, regulatory agency and other government body in which Franchisee is a party, substantially and materially affecting Franchisee's obligations under this Franchise.

7.2 Franchisee shall make available to City, upon reasonable advance written notice, such information or reports pertinent to enforcing the terms of the Franchise in such form and at such times as the City may request. The City agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law.

7.3 Concurrently with the remittance of franchise fees as required by this Franchise and DMC 6.11, Franchisee shall submit a report of its gross revenues earned or derived within the City and the computation of franchise fees.

8. INSURANCE

Franchisee attaches and incorporates the following exhibits:

Performance Bond consistent with the requirements of DMC 6.11.8(J).

Certificate of insurance that names the City as an additional insured and is otherwise consistent with the requirements of DMC 6.11.8(H).

9. SEVERABILITY CLAUSE

If any clause, sentence, or any other portion of this Franchise becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. If any material portion of the Franchise becomes illegal, null or void so that the intent of the Franchise is frustrated, the parties agree to negotiate replacement provisions to fulfill the intent of the Franchise consistent with applicable law.

10. REMEDIES

10.1. Subject to the reservation of rights in DMC 6.11, if Franchisee fails to comply with any material provision of this Franchise, or if grounds for revocation of this Franchise exist under DMC 6.11.7(N), Franchisee will forfeit all rights and privileges granted by this Franchise. That forfeiture and revocation of the Franchise will not occur until the City complies with the requirements for revocation of the Franchise set out in DMC 6.11.7.

10.2. Notwithstanding the above, failure or default or violation by Franchisee shall not constitute grounds for the forfeiture of this Franchise if due materially, substantially and reasonably to an act of God, fire, flood, storm or other element or casualty, theft, war, disaster, strike, lock-out, boycott, prevailing war or war preparation, beyond the control of Franchisee.

10.3. All remedies under this Franchise, including revocation of the Franchise, are cumulative and not exclusive, and the recovery or enforcement by one available remedy is not a bar to recovery or enforcement by any other such remedy. The City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon Franchisee by or pursuant to this Franchise. A specific waiver of a particular breach of any term, condition or obligation imposed upon Franchisee by or pursuant to this Franchise shall not be a waiver of any other, or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

10.4. The right is hereby preserved to the City to adopt, in addition to the reservations contained herein and existing applicable ordinances, such additional regulations as it shall find necessary for the regulation of the Public Rights-of-Way. Franchisee shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulations as the City may hereafter by resolution or ordinance provide. The City hereby reserves the right to exercise, with regard to this Franchise, all authority now or hereafter granted to the City by State statute or City Charter, except where such authority may be modified or superseded by the Constitution of the State of Oregon or the Constitution of the United States.

11. ASSIGNMENT

All rights and privileges granted and duties imposed by this Franchise upon Franchisee shall extend to and be binding upon Franchisee's successors, legal representatives and assigns, in accordance with the procedures in Chapter 6.11 of the DMC. Franchisee shall request the City's consent for any transfer, assignment or other disposition of its Telecommunications Facilities or majority control of its Telecommunications Facilities at least sixty (60) days before any such transfer, assignment or other disposition occurs. No transfer, assignment or other disposition shall be recognized for purposes of this Franchise until the assignee or transferee has obtained and filed with the City the performance bond and insurance certificate required by Paragraph 9 of this Franchise, and has agreed to the terms and conditions of this Franchise.

12. NOTICE

Unless specifically provided otherwise herein, all notices shall be mailed, postage prepaid, to the following addresses or to such other addresses as Franchisee or the City may designate in writing:

If to Franchisee: Holly Horton, Operations Administrator
4771 Industry Rd.
Central Point OR 97502

If to City: City of Dayton
Attention: City Manager
416 Ferry Street
PO Box 339
Dayton, OR 97114

13. GOVERNING LAW

The law of the State of Oregon governs the validity of this Franchise, and its interpretation, performance and enforcement. Any action or suit to enforce or construe any provision of this Franchise by any party shall be brought in the Circuit Court of the State of Oregon for Yamhill County, or the United States District Court for the District of Oregon.

14. EFFECTIVE DATE

The effective date of this Franchise is the ___ day of _____________, 2026.

CITY OF DAYTON

By: ______________________________
Mayor

By: ______________________________
Title:

Attest: ___________________________
City Recorder