

RESOLUTION NO. 1424

A RESOLUTION OF THE CITY OF DAYTON, WASHINGTON, APPROVING A COOPERATION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE CITY OF DAYTON FOR REHABILITATION OF A FEDERAL FLOOD CONTROL WORK, AUTHORIZING THE MAYOR TO EXECUTE SAME AND DESIGNATING PRINCIPAL LEGAL OFFICER AND AUTHORIZING EXECUTION OF CERTIFICATES.

WHEREAS, the United States Government (hereinafter referred to as the "Government") constructed the Dayton Levee Project (hereinafter referred to as the "Project"), authorized by Public Law 77-228, an Act Authorizing the Construction of Certain Public Works on Rivers and Harbors for Flood Control, and for Other Purposes (1941), which directed that "[t]he project for local flood protection on the Touchet River at Dayton, Washington, is hereby authorized to be constructed substantially in accordance with the recommendation of the Chief of Engineers in House Document Number 662, Seventy-sixth Congress, third session";

WHEREAS, the Project was constructed at Federal expense subject to conditions of local cooperation, which required responsible local interests, including the City of Dayton, to provide all necessary lands, easements, and rights-of-way, hold the Government free from claims for damages, and maintain the works after completion;

WHEREAS, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair or restoration of flood control improvements threatened or destroyed by floods;

WHEREAS, via written correspondence, the City of Dayton requested the Government to repair or restore four sections of levee system within the corporate limits of Dayton that were damaged by a February 2020 flood event, in accordance with 33 U.S.C. 701n and established policies of the U.S. Army Corps of Engineers; and

WHEREAS, the Government has indicated its willingness and ability to repair or restore four sections of the levee system within the corporate limits of Dayton that were damaged by a February 2020 flood event on terms and conditions outlined in a Cooperation Agreement between the United States of America and the City of Dayton for Rehabilitation of a Federal Flood Control Work; and

WHEREAS, the City Council of the City of Dayton finds that approving said cooperation agreement is in the best interests of residents of the City of Dayton and will promote the general health, safety and welfare;

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

SECTION 1. AUTHORIZATION OF AGREEMENT. The City Council hereby approves the Cooperation Agreement between the United States of America and the City of Dayton for Rehabilitation of a Federal Flood Control Work, as provided in the form attached hereto as Attachment "A".

SECTION 2. EXECUTION OF AGREEMENT. The Mayor is hereby authorized to execute the Cooperation Agreement on behalf of the City of Dayton.

SECTION 3. EXECUTION OF CERTIFICATE OF LANDS AUTHORIZATION. The Mayor is hereby authorized to execute a Certificate of Lands and Authorization as may be required by the Government.

SECTION 4. DESIGNATION OF PRINCIPAL LEGAL OFFICER AND AUTHORIZING EXECUTION OF CERTIFICATES. Quinn N. Plant, City Attorney, is hereby designated as principal legal officer for the City of Dayton for purposes of the Cooperation Agreement and is hereby authorized to execute the Certificate of Authority appended to the Cooperation Agreement and other certificates as legal officer for the City of Dayton as may be required by the Government in connection with the Cooperation Agreement.

SECTION 5. OTHER NECESSARY ACTION. The Mayor or his designee is hereby authorized to undertake and implement such administrative procedures as may be necessary to carry out the direction of this resolution.

SECTION 6. EFFECTIVE DATE. That this resolution shall take effect and be in full force upon passage and signatures hereon.

PASSED by the City Council of the City of Dayton, Washington on this 8 day of July, 2020.

City of Dayton


Zac Weatherford, Mayor

Attested/Authenticated by:



Trina Cole, City Administrator

Approved as to form:



Quinn Plant, City Attorney

CERTIFICATION

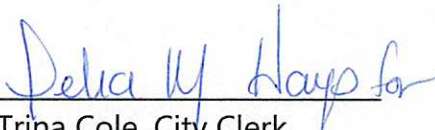
I, the undersigned, City Clerk of the City of Dayton, Washington (the "City"), hereby certify as follows:

1. The attached copy of Resolution No. 1424 (the "Resolution") is a full, true and correct copy of a resolution duly passed at a regular meeting of the City Council on July 8, 2020, as that Resolution appears on the minute book of the City; and the Resolution is in full force and effect, having been approved by the City Council, signed by the mayor and attested to by the City Clerk.

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of July, 2020.

CITY OF DAYTON, WASHINGTON


Trina Cole, City Clerk

CERTIFICATION OF LANDS AND AUTHORIZATION

The Public Sponsor does hereby grant to the United States of America, its representatives, agents and contractors, an irrevocable right, privilege and permission to enter upon the lands hereinbefore mentioned for the purpose of prosecuting the project.

The Public Sponsor certifies to the United States of America that any lands acquired subsequent to the execution of the Cooperation Agreement that are necessary for this project have been accomplished in compliance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Public Law 91-646) as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR, Part 24.

DATE: 7/29/2020

By: _____


Zac Weatherford, Mayor
City of Dayton
State of Washington

ATTORNEY'S CERTIFICATE

RE: Certification of Lands and Authorization for Entry for the 2020 Dayton Levee Rehabilitation Effort, Columbia County, Washington.

I, Quinn N. Plant, an attorney admitted to practice law in the State of Washington, certify that:

I am the attorney for the City of Dayton. I have examined the title to Assessor's Parcel Nos. 1-150-21-131-0000, 1-160-17-037-0000, 1-150-20-000-0305 and 1-160-20-099-000 of land (subject property), Columbia County, Washington, identified by the U.S. Army Corps of Engineers as needed for all levee system damage sites identified and approved in the 2020 Dayton Levee Rehabilitation Effort, located in the City of Dayton, in Columbia County, Washington and included in the Certification of Lands and Authorization For Entry document to which this Certificate is appended.

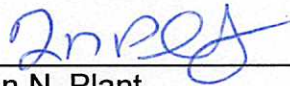
The Public Sponsor is vested with sufficient title and interest in the described lands required by the United States of America to support the construction, operation, and maintenance of the Dayton Levee Rehabilitation Effort.

There [X] are (see attached Risk Analysis) [] are no outstanding third party interests of record that could defeat or impair the title and interests of the Public Sponsor in and to the lands described, or interfere with construction, operation, and maintenance of the Project. Such interests include, but are not limited to, public roads and highways, public utilities, railroads, pipelines, other public and private rights of way, liens and judgments. To the extent such interests existed prior to acquisition of the described lands by the Public Sponsor such interests have either been cleared or subordinated to the title and interests so acquired, except as provided in the attached risk analysis.

The City of Dayton has authority to grant the Certification of Lands and Authorization for Entry to which this Certificate is appended; that said Certification of Lands and authorization for entry is executed by the proper duly authorized authority; and that the authorization for entry is in sufficient form to grant the authorization therein stated.

As to questions of material fact to the opinions expressed herein, we have relied upon representations and certifications of the City of Dayton and its officials and agents and Litigation Guarantees or title reports furnished to us without undertaking to verify the same by independent investigation.

DATED AND SIGNED at Yakima, this 29th day of July, 2020.



Quinn N. Plant
Attorney
City of Dayton

RISK ANALYSIS FOR OUTSTANDING THIRD PARTY INTERESTS

RE: Certification of Lands and Authorization for Entry for the 2020 Dayton Levee Rehabilitation Effort, Columbia County, Washington.

There are outstanding third party interests of record in and to the lands required for the Project. An evaluation of those interests is as follows:

1. IDENTIFICATION OF THIRD PARTY INTERESTS:

- a. The Port of Columbia acquired a portion of the subject property from the City of Dayton by Statutory Warranty Deed recorded March 22, 1976, under Auditor's No. F-9932. This deed provided that this conveyance was "SUBJECT to easement for Touchet River Dike." The Deed does not specifically reference these rights as held by the City and does not provide a description of the location of the easement. In addition, no recorded grant of this easement was shown in the Litigation Guarantee for the subject property.
- b. The United States of America acquired a portion of the subject property from the Port of Columbia by Warranty Deed recorded January 7, 1986, under Auditor's No. H597. This deed provided that this conveyance was "SUBJECT TO: . . . a. Easements or rights-of-way, temporary or permanent, to build, construct, reconstruct, and repair levees, embankments, revetments, canals, and any incidental works appurtenant thereto in conjunction with the Dayton Flood Control Project." The Deed does not specifically reference these rights as held by the City and does not provide a description of the location of the easement. In addition, no recorded grant of this easement was shown in the Litigation Guarantee for the subject property. This portion of the subject property was the subject of a Letter of Transfer dated August 29, 1989, from the Department of the Army, U.S. Corps of Engineers to the Department of the Interior, U.S. Fish and Wildlife Service. A Litigation Guarantee for this portion of the subject property did not disclose that this Letter of Intent had been recorded. "Article 7 – Encumbrances and Reservations" of this Letter of Intent provides "Tract 304 acquired for the Dayton Pond satellite was acquired subject to an easement to the Dayton Flood Control Project, City of Dayton, to build and repair levees, revetments, canals, and incidental works thereto. This easement concerns a preexisting flood control project consisting of levees along the Touchet River. It was determined this

flood control project easement posed no conflict with the Government's project."

- c. The United States of America also acquired easements within portions of the subject property by Warranty Easement Deeds recorded December 3, 1985, under Auditor's No. H516, and recorded January 7, 1986, under Auditor's No. H598. These Easement Deeds conveyed perpetual and assignable easements and rights-of-way in, on, over, and across portions of the subject property for the location, construction, operation, maintenance, alteration, repair, and patrol of underground water pipelines and intake structures and rights to maintain and remove obstructions in the areas within the rights-of-way. These easements were acquired from the City of Dayton and the Port of Columbia. Part of these interests were also the subject of the Letter of Transfer between the Department of the Army, U.S. Corps of Engineers to the Department of the Interior, U.S. Fish and Wildlife Service described in subparagraph 1b above. The City of Dayton in its Warranty Easement Deed also reserved "all such rights and privileges as may be used without interfering with the rights and easements hereby acquired." As described in paragraph 1a above, the Deed of conveyance to the Port of Columbia provided that it was "SUBJECT to easement for Touchet River Dike."
- d. A Quitclaim Deed to the City for a portion of the subject property recorded November 19, 1910, in Book 13 of Deeds, pages 216-218, provided it was subject to a right of way for a mill race heretofore deeded and now owned by Portland Flouring Mill Company, and excepting from the above described lands all that part of the same, if any, situated lying and being on the east side of said Mill Race as the same is now constructed. No recorded instrument for such right of way or exception or transfer of the right of way was shown in the Litigation Guarantee for the subject property. The description in the Deed is insufficient to determine the exact location of the described rights. The survey map for the subject property (attached) does not indicate the presence of a mill race or flouring mill. A general web search and searches for the Washington Secretary of State, the Washington Department of Licensing and the Oregon Secretary of State showed no history or record for the Portland Flouring Mill Company.

2. **ASSESSMENT:** (Discuss whether the exercise of that interest is likely to physically impair the Project. Discuss the legal implications if the interest is not cleared or subordinated. Discuss the practical impediments to the exercise of the interest such as any required permits, land use restrictions, or compensation.)

- a. The interest of the Port of Columbia described in subparagraph 1a above was specifically acquired from the City of Dayton subject to an easement for the Touchet River Dike. This interest has not been conveyed to any third party. The City of Dayton is not aware that the Port of Columbia has on any occasion asserted that the City of Dayton does not have an easement for the Touchet River Dike and, therefore, there is no basis to conclude that such an assertion is probable. For these reasons the exercise of this interest is not likely to physically impair the Project, clearing of the interest or subordination should not be required and a discussion of the practical impediments to the exercise of the interest such as any required permits, land use restrictions, or compensation is not necessary.
- b. The interest of the United State of America described in subparagraph 1b above was specifically acquired subject to easements or rights-of-way for the Dayton Flood Control Project. The Letter of Transfer between the Department of the Army, U.S. Corps of Engineers to the Department of the Interior, U.S. Fish and Wildlife Service described in subparagraph 1b above more specifically provides that this interest is "subject to an easement to the Dayton Flood Control Project, City of Dayton." The Letter of Transfer further provides that "It was determined this flood control project easement posed no conflict with the Government's project." The City of Dayton is not aware that the U.S. Fish and Wildlife Service has on any occasion asserted that the City of Dayton does not have an easement for the Dayton Flood Control Project and, therefore, there is no basis to conclude that such an assertion is probable. Such an assertion would be in conflict with the terms and representations in the Letter of Transfer accepted by the U.S. Fish and Wildlife Service. For these reasons the exercise of this interest is not likely to physically impair the Project, clearing of the interest or subordination should not be required and a discussion of the practical impediments to the exercise of the interest such as any required permits, land use restrictions, or compensation is not necessary.
- c. The interest of the United State of America described in subparagraph 1c above was acquired from City of Dayton and the Port Columbia. Part of these interests were also the subject of the Letter of Transfer between the Department of the Army, U.S. Corps of Engineers to the Department of the Interior, U.S. Fish and Wildlife Service described in subparagraph 1b and subparagraph 2b above. The Letter of Transfer specifically provides that this interest is "subject to an easement to the Dayton Flood Control Project, City of Dayton." The Letter of Transfer further provides that "It was determined this flood control project easement posed no conflict with the Government's project." The City of Dayton also reserved "all such rights and privileges as may be used without interfering with the rights and

easements hereby acquired." As described in paragraph 1a above, the Deed of conveyance to the Port of Columbia provided that it was "SUBJECT to easement for Touchet River Dike." The City of Dayton is not aware that the U.S. Fish and Wildlife Service or the Port of Columbia has on any occasion asserted that the City of Dayton does not have an easement for the Dayton Flood Control Project or the Touchet River Dike and, therefore, there is no basis to conclude that such an assertion is probable. For these reasons the exercise of this interest is not likely to physically impair the Project, clearing of the interest or subordination should not be required and a discussion of the practical impediments to the exercise of the interest such as any required permits, land use restrictions, or compensation is not necessary.

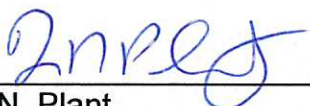
- d. In view of the date of recording the document described in subparagraph 1c above, the absence of any mill race or flouring mill on the subject property and the lack of any record of the purported owner of these rights, Portland Flouring Mill, there is no basis to conclude that the assertion of any rights under this document is probable. For these reasons the exercise of this interest is not likely to physically impair the Project, clearing of the interest or subordination should not be required and a discussion of the practical impediments to the exercise of the interest such as any required permits, land use restrictions, or compensation is not necessary.

3. PLAN TO RESOLVE: (Discuss recourse available to protect the Project in the event the outstanding interest is exercised).

- a. In the event the that the Port of Columbia asserted that the City of Dayton does not have an easement for the Touchet River Dike, the City of Dayton would assert its rights pursuant to the documents described and assessed in subparagraphs 1a and 2a above, and the years of exercise of the easement by the City of Dayton. Furthermore, in view of the title documents of record and the years of exercise of the easement by the City of Dayton without such an assertion, there is no basis to conclude that such an assertion is probable.
- b. In the event the that the U.S. Fish and Wildlife Service asserted that the City of Dayton does not have an easement for the Dayton Flood Control Project, the City of Dayton would assert its rights pursuant to the to the documents described and assessed in described in subparagraphs 1b and 2c above, and the years of exercise of the easement by the City of Dayton. Furthermore, in view of the title documents described and the years of exercise of the easement by the City of Dayton without such an assertion, there is no basis to conclude that such an assertion is probable.

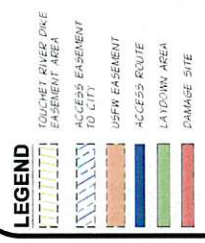
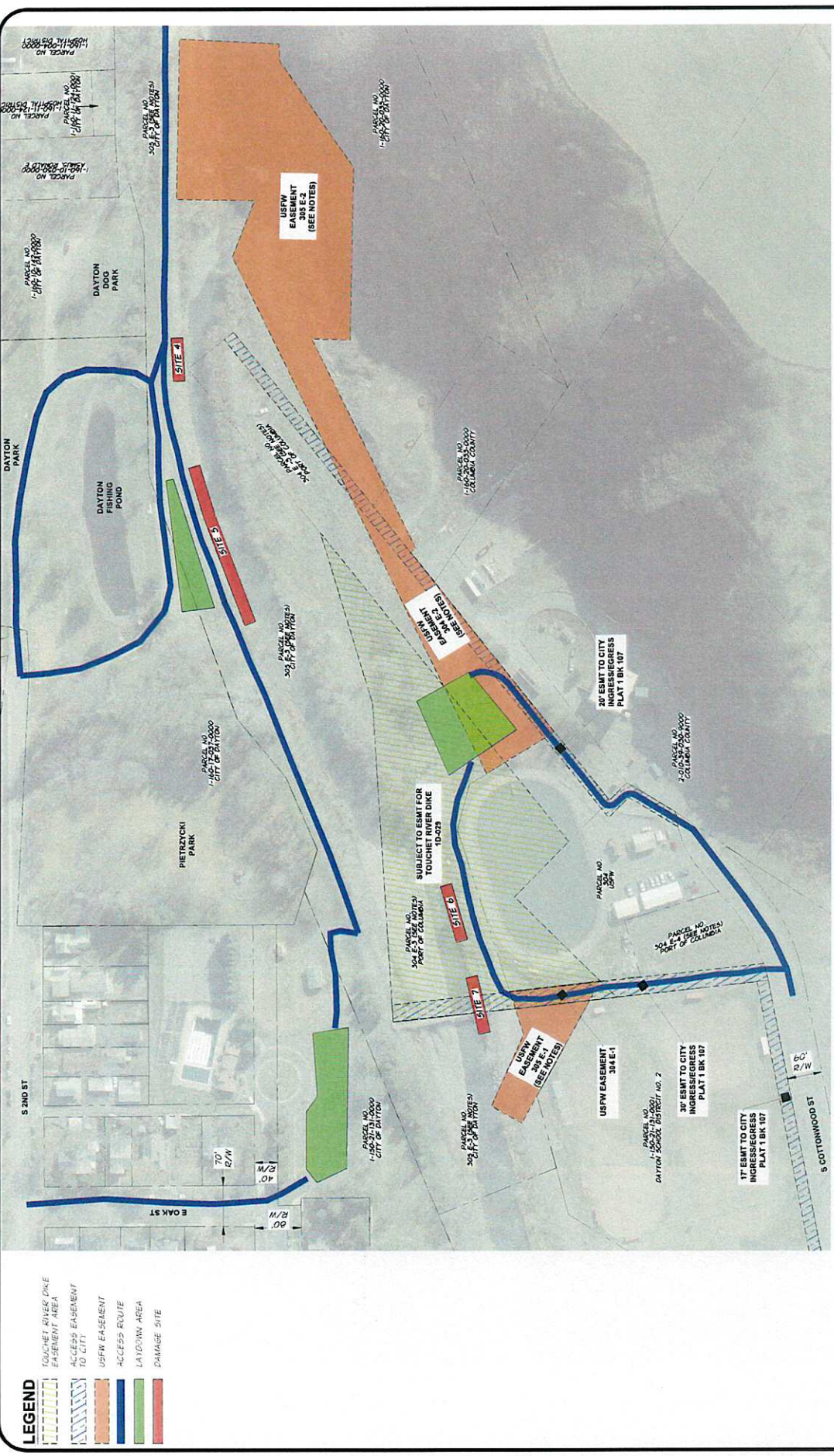
- c. In the event the that the U.S. Fish and Wildlife Service or the Port of Columbia asserted that the City of Dayton does not have an easement for the Dayton Flood Control Project or the Touchet River Dike, the City would assert its rights pursuant to the documents described and assessed in subparagraphs 1a, 1b, 2a and 2b above, and the years of exercise of the easement by the City of Dayton. Furthermore, in view of the title documents described and the years of exercise of the easement by the City of Dayton without such an assertion, there is no basis to conclude that such an assertion is probable.
- d. As described and assessed in subparagraphs 1 d and 2 d above, there is no basis to conclude that the assertion of any rights that would conflict with the Project is probable.

Signed:

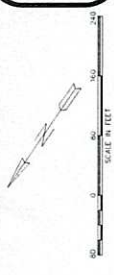


Quinn N. Plant
Attorney
City of Dayton

DATE 7/29/2020



NOTES:
 USFW EASEMENT DEED REFERENCES FROM THE
 PORT OF COLUMBIA PARCELS 304 E-1, 304 E-2, 304 E-3
 AND 304 E-4 RECORDED IN DRAWER 2E FRAME 056.
 CITY OF DAYTON: PARCELS 305 E-1, 305 E-2, 305 E-3 AND
 305 E-4 RECORDED IN DRAWER 2D FRAME 912



**anderson
perry
& associates, inc.**

**CITY OF
DAYTON, WASHINGTON
FLOOD ASSISTANCE - 2020
CITY DAMAGE SITES
OWNERSHIP AND EASEMENTS**

**FIGURE
1**

**COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
and
THE CITY OF DAYTON
for
REHABILITATION OF A FEDERAL FLOOD CONTROL WORK**

THIS AGREEMENT, entered into this 4th day of August, 2020, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") represented by the District Engineer, Walla Walla District, U.S. Army Corps of Engineers, and **THE CITY OF DAYTON** (hereinafter referred to as the "Public Sponsor"), represented by its Mayor.

WITNESSETH THAT:

WHEREAS, the Government constructed the Dayton Levee Project (hereinafter referred to as the "Project"), authorized by Public Law 77-228, an Act Authorizing the Construction of Certain Public Works on Rivers and Harbors for Flood Control, and for Other Purposes (1941), which directed that "[t]he project for local flood protection on the Touchet River at Dayton, Washington, is hereby authorized to be constructed substantially in accordance with the recommendation of the Chief of Engineers in House Document Number 662, Seventy-sixth Congress, third session";

WHEREAS, the Project was constructed at Federal expense subject to conditions of local cooperation, which required responsible local interests to provide all necessary lands, easements, and rights-of-way, hold the United States free from claims for damages, and maintain the works after completion;

WHEREAS, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair or restoration of flood control improvements threatened or destroyed by floods;

WHEREAS, via written correspondence, the Public Sponsor has requested that the Government repair or restore the project, which was damaged by recent flooding or coastal storms, in accordance with 33 U.S.C. 701n and established policies of the U.S. Army Corps of Engineers; and

WHEREAS, the Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the rehabilitation effort of the authorized project in accordance with the terms of this Agreement;

NOW, THEREFORE, the Government and the Public Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean to restore Project levees to as-was condition. This will include re-establishing riverside and landside slopes and riprap revetments where visible damage exists at 9 sites. Successful repairs will include restoring the riverside slopes with suitable fill material, replacing damaged or displaced rip rap revetment along the riverside slopes, and replacing the toe in scoured areas to support the revetments and slopes. Please see *Appendix E: Repair Alternatives* to the Project Initiation Report (PIR) for the Dayton Levee Project, approved by the Northwest Division Engineer on June 11, 2020, for a more detailed description of the repairs. Additional project information is described in the PIR.

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Public Sponsor and the Government, in accordance with the terms of this Agreement, directly related to implementation of the Rehabilitation Effort. The term shall include, but is not necessarily limited to: actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XII. The term shall not include any costs for operation and maintenance; any costs to correct deferred or deficient maintenance; any costs for betterments; any costs for Public Sponsor-preferred alternatives; or the costs of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas required for the Rehabilitation Effort.

C. The term "betterment" shall mean the design and construction of a feature accomplished on behalf of, or at the request of, the Public Sponsor in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States, and using those funds shall expeditiously implement the Rehabilitation Effort, applying those procedures usually followed or applied in Government construction of Federal projects, pursuant to Federal laws, regulations, and policies. The Public Sponsor shall be afforded the opportunity to review and comment on solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Public Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Public Sponsor shall provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Project and the

Rehabilitation Effort.

C. As further specified in Article IV, the Public Sponsor shall contribute, in cash, in-kind services, or a combination thereof, a contribution toward construction of the Rehabilitation Effort in an amount equal to **\$0.00** towards the total Rehabilitation Effort costs.

D. The Public Sponsor shall not use Federal funds to meet its share of total Rehabilitation Effort costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized by statute.

E. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort and any authorized project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

F. The Public Sponsor agrees to continue to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program, and of Title 33, Code of Federal Regulations, Part 208.10 (33 CFR 208.10).

G. The Public Sponsor may request the Government to accomplish betterments. The Public Sponsor shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Public Sponsor in accordance with Article IV.

ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646

A. The Government shall provide the Public Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Rehabilitation Effort and the authorized project. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

B. The Public Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, and maintenance of the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - METHOD OF PAYMENT

A. The Public Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Public Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be **\$3,540,056** and the Public Sponsor's share (cash and services in kind) of total Rehabilitation Effort costs are currently estimated to be **\$0.00**. In order to meet Public Sponsor's cash payment requirements, the Public Sponsor must provide a cash contribution estimated to be **\$0.00**. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Public Sponsor.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Public Sponsor of the Public Sponsor's estimated share of the total Rehabilitation Effort costs including the Public Sponsor's estimated share of the costs attributable to the Rehabilitation Effort incurred prior to the initiation of construction. Within five calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the required contribution by wire transfer, Electronic Funds Transfer, or by delivering a check payable to "FAO, USAED-Walla Walla" to the Contracting Officer representing the Government. The Government shall draw on the funds provided by the Public Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Rehabilitation Effort as they are incurred, as well as Rehabilitation Effort costs incurred by the Government. In the event that total Rehabilitation Effort costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Public Sponsor of the additional contribution the Public Sponsor will be required to make to meet the Public Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Public Sponsor. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the total Rehabilitation Effort costs and tender to the Public Sponsor a final accounting of the Public Sponsor's share of Rehabilitation Effort costs.

1. In the event the total contribution by the Public Sponsor is less than the Public Sponsor's required share of total Rehabilitation Effort costs, the Public Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Public Sponsor's required share of the total Rehabilitation Effort costs.

2. In the event total contribution by the Public Sponsor is more than the Public Sponsor's required share of total Rehabilitation Effort costs, the Government shall, no

later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Public Sponsor; however, the Public Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Public Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Public Sponsor for excess contributions provided.

ARTICLE V – CREDITING OF IN-KIND SERVICES

The Government has approved a credit for In-Kind Services, compatible with the Rehabilitation Effort, in the estimated amount of **\$0.00** for implementation of such services by the Public Sponsor. The affording of such credit shall be subject to an onsite inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Rehabilitation Effort. The actual amount of such credit shall be subject to an audit conducted to determine reasonableness, allocability, and allowability of costs. The Government shall apply the credit amount toward any additional cash contribution required under this Agreement. The Public Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Public Sponsor be entitled to any reimbursement for any excess credit amount.

ARTICLE VI - OPERATION AND MAINTENANCE

A. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsor with written notice of such determination, the Public Sponsor shall continue to operate and maintain the completed Rehabilitation Effort as part of the project, at no cost to the Government, in accordance with specific directions prescribed by the Government in Title 33, Code of Federal Regulations, Part 208.10, Engineer Regulation 500-1-1, and any subsequent amendments thereto.

B. The Public Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsor owns or controls for access to the Project for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the Project. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsor. If, after 30 calendar days from receipt of such notice, the Public Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsor owns or controls for access to the authorized project for the purposes of completing, operating, and maintaining the project. No action by the Government shall operate to relieve the Public Sponsor of responsibility to meet the Public Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE VII - FEDERAL AND STATE LAWS

In the exercise of the Public Sponsor's rights and obligations hereunder, the Public Sponsor agrees to comply with all applicable Federal and state laws and regulations.

ARTICLE VIII - RELATIONSHIP OF PARTIES

The Government and the Public Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

ARTICLE IX - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE X - COVENANT AGAINST CONTINGENT FEES

The Public Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XI - TERMINATION OR SUSPENSION

If at any time the Public Sponsor fails to carry out its obligations under this Agreement, the District Engineer shall terminate or suspend work on the Rehabilitation Effort, unless the District Engineer determines that continuation of work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Public Sponsor elects to proceed with further construction or terminates this Agreement.

ARTICLE XII - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the Contracting Officer, the Public Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Public

Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Public Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other, and the Public Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Public Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort and the authorized Project. Should the Government and the Public Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Public Sponsor shall be responsible, as between the Government and the Public Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Public Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Public Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort, or proceed with further work as provided in Article XI of this Agreement.

D. The Public Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the operator of the Project (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XIII - NOTICES

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Public Sponsor:

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

If to the Government:

District Commander
US Army Corps of Engineers
201 N. 3rd Ave.
Walla Walla, WA 99362-7816

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

IN WITNESS HEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

BY: 

Richard T. Childers
Lietutenant Colonel, Corps of Engineers
District Commander

CITY OF DAYTON

BY: 

Zac Weatherford
Mayor

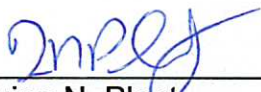
DATE: 8/7/2020

DATE: 7/28/2020

CERTIFICATE OF AUTHORITY

I, Quinn N. Plant, do hereby certify that I am the principal legal officer of the City of Dayton, and it is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Dayton in connection with the Rehabilitation Effort, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the person who has executed this Agreement on behalf of the City of Dayton has acted within their statutory authority.

IN WITNESS HEREOF, I have made and executed this certification this 28th day of July, 2020.



Quinn N. Plant
Attorney
City of Dayton

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of their knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATED this 28th day of July, 2020.



Zac Weatherford
Mayor
City of Dayton