



DAYTON CITY COUNCIL
111 S. 1st Street, Dayton, WA 99328

PRELIMINARY AGENDA
REGULAR MEETING
Monday, January 11, 2016
7:00 p.m.
Craig George, Mayor

1. **CALL TO ORDER**
 - A. Roll Call
2. **CONSENT AGENDA – Action**
 - A. December 7, 2015 City Council Meeting Minutes
 - B. Voucher Warrants as audited by the Finance Committee
 - C. December 2015 Payroll Warrants
3. **SPECIAL GUESTS AND PUBLIC COMMENT**
 - A. Brad McMasters, Economic Development Coordinator – Presentation of New Old Time Chautauqua community event and request for use of city facilities associated with event
4. **COMMITTEE/BOARD/COMMISSION REPORTS**
 - A. Nomination and Election of 2016 Mayor Pro-Tem
5. **REPORTS OF CITY OFFICERS**
6. **UNFINISHED BUSINESS**
7. **NEW BUSINESS**
 - A. **ACTION:** Authorize the Class IV Offender Work Crew Master Agreement with Department of Corrections for January 2016 – November 2019
 - B. **ACTION:** Agreement for Professional services and Transportation Improvement Board(TIB) Consultant with Anderson Perry & Associates to perform engineering services associated with the N. Front Street and S. 1st Street TIB projects
8. **FINAL PUBLIC COMMENT**
9. **EXECUTIVE SESSION**
 - A. RCW 42.30.110 (g) - To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee
10. **ADJOURN**

3(A) 

From: Brad McMasters
To: tcole@daytonwa.com
Subject: FW: New Old-Time Chautauqua
Date: Thursday, January 07, 2016 8:25:48 AM

Here is the email.

Brad

From: Brad McMasters [mailto:brad@portofcolumbia.org]
Sent: Monday, January 04, 2016 11:29 AM
To: 'Trina D. Cole' <cityclerk@daytonwa.com>
Subject: New Old-Time Chautauqua

Hi Trina,

There will be an organization coming to town in July called the New Old-Time Chautauqua. They are a traveling education and entertainment group who will be touring 7 Washington State Parks. They are working with Clara McQuary of WA State Parks, the Dayton Chamber and myself on organizing this two-day event.

We were hoping we could present this to the City Council on 1/11/15 for two reasons. There is a parade component (Andrew is working on this) and they would like use of the City Park for workshops one afternoon (my responsibility). Do you think we could present on that night?

Brad McMasters
Economic Development Coordinator
Port of Columbia/SEWEDA
1 Port Way, Dayton, WA 99328
(509) 382-2577 work
(509) 386-4750 cell
(509) 382-8993 fax
www.portofcolumbia.org
[Like us on Facebook](#)

www.chautauqua.org

7(A)



State of Washington
DEPARTMENT OF CORRECTIONS

December 10, 2015

Dear Recipient of Offender Work Crew Services,

The Department of Corrections, (Department), is pleased to announce that a new offender work crew services Master Agreement between your organization (Organization) and the Department will take effect on **January 1, 2016**, provided that the Organization's Master Agreement is completed, signed and returned no later than January 1, 2016, with the following:

- 1) Proof of the Organization's current general liability insurance coverage;
- 2) A copy of the Organization's L&I Rate Notice that confirms the addition of the appropriate offender risk classification to the organization L&I Account; and
- 3) If the Organization is a nonprofit, proof of IRS status as a "public benefit nonprofit" which is a nonprofit that the IRS has designated as a 501(c)(3) charitable organization or a 501(c)(4) social welfare organization. If your organization is not a public benefit nonprofit then it is no longer eligible for offender work crew services.

Any current work crew agreement(s) and work project description(s) between the Organization and the Department **will expire on December 31, 2015**, so it is imperative that a signed Master Agreement is timely returned with the other required documentation. Please notify the Department if you are unable to return the documents by the January 1, 2016, due date.

To Notify the Department: Please call or email your Organization's usual Department contact for work crew services at the prison or community corrections location in your local area. If you are unable to reach the usual Department contact, then: please call Contracts and Legal Affairs 360.725.8367 or 360.725.8366.

Please distribute this notice broadly as the Department will NOT be notifying anyone else in the Organization who should be informed of, or given copies of, the new Master Agreement nor the associated requirements. The Department is only notifying, via email, one contact person from each Organization. Additionally, please notify the Department if the Organization's Contract Manager has changed, or if his/her contact information, has changed.

In addition to signing the new Master Agreement, please complete the following grey areas in the document:

- Page 1: official organization address,
- Page 2: billing address and contact person,
- Page 5: contract manager, title and contact information,
- Page 6: L&I Account Number for the organization, and
- Page 8: Signature and other information.

The fully signed and executed Master Agreement, complete with contract number, will be returned to the organization after signature by the Department. Thank you in advance for your prompt attention to this matter.

Respectfully,

Debra Eisen
Senior Contracts Attorney

Attachments to Cover Email

1. DOC Hazard Assessment Certification and PPE Selection Worksheet - for your use
2. L&I Workers' Compensation Coverage for Offenders Information Sheet - for your reference

Class IV Work Crew Master Agreement
Between
THE WASHINGTON STATE DEPARTMENT OF CORRECTIONS
And
CITY OF DAYTON

This Master Contract Agreement is entered into by and between the State of Washington, Department of Corrections, hereinafter referred to as DOC, and, City of Dayton located at hereinafter referred to as the 'RECIPIENT OF THE SERVICES' or 'RECIPIENT'. Legal authority for this Master Contract Agreement is pursuant to RCW 72.09.100 and Chapter 137-80 WAC.

Offenders who provide services under this Agreement reside in a DOC prison and are under the jurisdiction of the Washington State Department of Corrections.

1. PURPOSE

The purpose of this Agreement is to provide the master terms and conditions between the parties for offenders to provide work crew services to the RECIPIENT. To be eligible to receive offender services, the RECIPIENT must be an agency of Washington State government, a local government or federally recognized Indian tribe within Washington State or a public benefit nonprofit as defined by the IRS; a 501(c)(3) Charitable Organization or a 501(c)(4) Social Welfare Organization. No public employees will be displaced as a result of this Agreement.

On January 1, 2016, the terms and conditions contained in this Master Agreement will replace and terminate any previous Work Crew Agreement and Work Project Descriptions between the Parties. For this Master Agreement to be valid it must be signed by the DOC Contracts Administrator or designee on behalf of DOC.

2. WORK PROJECT DESCRIPTIONS

Offender work crew projects are limited to those that can be properly supervised as determined by the Superintendent of the Institution or designee and the RECIPIENT's Contract Manager. Each project is subject to careful review for custody and security requirements. Each distinct project requires a separate Work Project Description that is signed by both parties to this Agreement. [*See Attachment A*] The Work Project Description will detail the work to be done by offenders, the cost to the RECIPIENT and other specifics of the particular project.

The Institution Superintendent or designee is authorized to sign Work Project Descriptions on behalf of DOC. A Work Project Description may be valid for up to one year but must end prior to or on the same date as this Master Contract Agreement. All services provided under each signed Work Project Description shall be performed pursuant to the terms of this Master Agreement.

3. TERM

The term of this Master Agreement shall begin January 1, 2016 and continue through November 30, 2019, unless terminated sooner as provided for herein.

4. BILLING and PAYMENT

In consideration of the services provided hereunder, payment to DOC will be as follows:

- A. DOC will invoice the RECIPIENT for payment by the 20th of the month following each month in which offender services were provided. Invoices for payment will include all direct and indirect charges payable to DOC by the RECIPIENT that were negotiated between the Parties, except that payment for offender L&I insurance coverage will be paid directly to L&I by the RECIPIENT and will not appear on DOC invoices.
- B. Payment by the RECIPIENT, will be due to the DOC address indicated below within 30 calendar days of the date of the invoice. This DOC Master Agreement number and the location of the project for which payment is made must be included with each payment.
- C. Workers compensation insurance is required by law for offenders who provide services to the RECIPIENT under the terms of this Agreement. RECIPIENT will:
 - 1) Prior to contract execution, contact its L&I Account Manager to request/authorize the addition of Offender **L&I Risk Classification 4908** to the RECIPIENT's L&I Account.
 - 2) Provide DOC with a copy of the Rate Notice received from L&I that confirms the addition of **Risk Classification 4908** to the RECIPIENT's L&I Account. DOC advises RECIPIENT to include the L&I Rate Notice when returning this partially executed Agreement to DOC for final signature by DOC.
 - 3) Each quarter, for offender services provided to the RECIPIENT during the previous quarter, report to L&I the total number of offender hours worked and pay the total cost due for workers' compensation coverage directly to L&I for those offender hours.
- D. Addresses to use for Billing and Payment.
 - 1) **Billing** - Invoices for payment will be mailed to the address provided by the RECIPIENT:

CITY OF DAYTON
Trina Cole, City Clerk-Treasurer
111 S. 1st Street
Dayton, WA 99328
 - 2) **Payment**
 - a. **State Agencies Only** - will pay using the following statewide vendor number: **SWV0003872-01** [IAP Payment - DOC General Account]
 - b. **All Other RECIPIENTS** - will send payment to the address provided by the DOC facility from which offender services were provided.

5. TERMINATION

When in its own best interest, either party may terminate this Agreement, in whole or in part, upon 30 days' written notice to the other party, beginning on the second day after mailing such notice. If

this Agreement is so terminated each of the parties shall be liable only in accordance with the terms of this Agreement for services rendered prior to the effective date of termination.

6. SELECTION OF OFFENDERS

The Institution will select the offenders for each work crew. Selection criteria will conform to DOC Policy 700.400, CLASS IV OFF-SITE WORK CREW, DIRECTIVE III, Offender Eligibility, as now written or hereafter revised.

7. HAZARD ASSESSMENT AND MITIGATION

- A. In accordance with the DOC Office of Risk Management, work generally considered to be dangerous or hazardous may not be performed by offenders.
- B. Before DOC offenders may provide services at any new and distinct project location, the RECIPIENT will assess the location for hazardous conditions and/or materials. (See Attachment B)
- C. The RECIPIENT's assessment must be performed in accordance with WAC 296-800-160 and provided to DOC using DOC Form 03-247 or other similar hazard assessment and PPE selection worksheet. The RECIPIENT will inform DOC promptly, in writing, if hazardous conditions or materials are found at the new project site.
- D. Once notified, DOC at its own discretion, may a) identify, with the RECIPIENT, the protective equipment or clothing that is needed for offenders and correctional officers to mitigate the effects of the on-site hazard(s); or b) request that the RECIPIENT remove or otherwise mitigate the hazard before offenders perform the contracted work crew services at that site; or c) withdraw from the project.
- E. If hazardous conditions or materials are discovered while offenders are working at RECIPIENT's site, then offender work will be suspended immediately and RECIPIENT will make appropriate regulatory notifications and request further assessment.

8. TOOLS, EQUIPMENT AND SUPPLIES

- A. In General
 - 1) DOC will provide offenders with basic work attire, such as boots, gloves, goggles and rain gear, that may be needed for any project;
 - 2) If the Parties to this Agreement do not negotiate otherwise, the RECIPIENT will provide any additional tools, equipment and supplies that offenders need to accomplish the Recipient's specific work project. This will include any Personal Protective Equipment (PPE) e.g. bump hats, specialized goggles or gloves, hearing and eye protective devices, etc. and any specialized safety equipment (SSE) necessary to protect offenders and correctional officers from hazards at the project site.
 - 3) The specific tools, equipment and supplies necessary for each project, and the party to the Agreement responsible for providing each item, will be designated in the Work Project Description for that project.

9. TRAINING

- A. The RECIPIENT will train offenders regarding the work to perform as well as any safety requirements specific to the project site and the use of any specialized equipment.
- B. The RECIPIENT will ensure that all safety training is in compliance with all applicable laws and regulations including, but not limited to, Division of Occupational Safety and Health (DOSH) regulations and the Washington Industrial Safety and Health Act (WISHA).

10. PRISON RAPE ELIMINATION ACT (PREA) and SEXUAL MISCONDUCT

PREA requirements shall apply to any person having contact with offenders under DOC jurisdiction. This includes, but is not limited to, governmental entities, contractors and their employees; Recipients of offender work crew services, vendors and their employees, student interns and volunteers, hereinafter referred to collectively as 'contractor'. Contractors may obtain electronic access to the documents cited below in Section 1, Authorities, from the DOC website.

A. Authorities

In the performance of services under this Contract, Contractors shall comply with all federal and state laws and DOC policies regarding sexual misconduct including, but not limited to:

Federal Law:

- Prison Rape Elimination Act of 2003 (PREA);

State Law, Washington:

- RCW 72.09.225, Sexual misconduct by state employees, contractors;
- RCW 9A.44.010, Definitions;
- RCW 9A.44.160 Custodial sexual misconduct in the first degree;
- RCW 9A.44.170, Custodial sexual misconduct in the second degree;

DOC Policy:

- DOC 490.800, Prison Rape Elimination Act (PREA) Prevention and Reporting;
- DOC 490.820, Prison Rape Elimination Act (PREA) Risk Assessments and Assignments;
- DOC 490.850, Prison Rape Elimination Act (PREA) Response;
- DOC 490.860, Prison Rape Elimination Act (PREA) Investigation; and
- DOC 610.025, Medical Management of Offenders in Cases of Alleged Sexual Abuse or Assault.

B. Contractor Requirements include, but are not limited to:

1. Zero tolerance toward all forms of sexual abuse and sexual harassment;
2. Familiarization and compliance with PREA law, relevant Washington State laws and DOC policies regarding PREA and sexual misconduct;
3. Ensuring that anyone who may have contact with DOC offenders complete DOC PREA/Sexual Misconduct training and comply with all PREA standards.

4. All personnel under this contract, with access to DOC offenders, must certify that they have not:
 - Engaged in sexual misconduct in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution as defined in 42 U.S.C. 1997;
 - Been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 - Been civilly or administratively adjudicated to have engaged in the activity described above.
 5. Providing sexual misconduct disclosure forms to DOC (DOC Form #03-502), completed by each person providing services, retaining a copy of the same in each individual personnel record.
 6. Submitting to a criminal background check, performed by DOC, at least once every five years.
 7. Compliance with the affirmative duty to report personnel with any conviction or adjudication of a violation of any of the offenses listed in #4, above.
- C. Investigations. DOC will investigate any allegation of the contractor's failure to comply with DOC PREA policies or the PREA standards.
- D. Consequences of a Contractor's failure to conform with DOC PREA policies include, but are not limited to:
1. Contractor removal from proximity to offenders;
 2. Contractor removal from contract work at DOC;
 3. Contract termination.

11. CONTRACT MANAGEMENT

The contract manager(s) for each of the Parties shall be responsible for and shall be the contact person(s) for all communications regarding the performance of this Agreement. Either party may, with written notice to the other, designate different contact persons.

RECIPIENT: *Trina Cole, City Clerk-Treasurer, (509) 382-2361, tcole@daytonwa.com*

DOC: *James Cerna, Local Business Advisor, (509) 526-6430, james.cerna@doc.wa.gov*

12. SUPERVISION

- A. The Work: RECIPIENT will supervise the work performed by offenders and maintain daily oversight of the project until completed. RECIPIENT will provide adequate worksite instruction and direction to all offenders, to ensure safe work performance and proper project outcome.
- B. Security and Custody: A first aid qualified Correctional Officer will supervise offenders at all times. Such DOC supervision shall only be for the security and custody of the offenders and the safety of the public at large.

Correctional Officers may not supervise the work performed by offenders or be responsible for project outcomes.

- C. On-Site Illness/Accidents: In the event of offender illness or injury, DOC will provide the appropriate first aid. If necessary, emergency medical assistance will be called, or the offender will be transported to the nearest medical facility for treatment.

1) Expenses:

- a) Illness. DOC will pay all expenses related to treatment of offender illness.
- b) Injury. The cost of treatment provided to offenders beyond first aid for any and all work related injuries will be paid in accordance with Title 51 RCW.
- c) The RECIPIENT's L&I account number, 000,151-00, will be the account number used by offenders, DOC and medical providers when reporting offender work related injury.

13. PUBLIC INFORMATION

Neither party shall arrange for news media coverage without the consent of the other party, nor shall either party release information to the news media without the consent of the other party.

14. WORK PRODUCT and PERFORMANCE

A. Washington State and DOC, including its agents and/or employees:

- 1) Are not responsible for, and do not guarantee, the quality of the work performed or products produced by offenders on work crews;
- 2) Shall not be required to pay other workers to re-do or repair the work performed by the offenders; and
- 3) Are not responsible for damages to third parties resulting from the work performed or products produced by offenders on work crews.

15. INDEMNIFICATION

A. RECIPIENT, its agents, and/or employees:

- 1) Are responsible for any damages resulting from the negligence of the RECIPIENT, its agents, and/or employees; and
- 2) Do indemnify, defend, and hold harmless DOC for claims arising from the negligent acts or omissions of the RECIPIENT, its agents, and/or employees.

B. DOC, its agents, and/or employees:

- 1) Are responsible for damages that arise out of DOC, its agents, and/or employees' negligent security supervision of offenders.

C. In accordance with the laws of the state of Washington and to the extent permitted by law, if both parties to this Agreement are negligent and jointly liable, each party will assume responsibility for its own negligent acts or omissions.

16. TRANSPORTATION

The DOC Facility has sole responsibility to transport offenders to and from the work project site.

17. DISPUTES

Should the parties hereto be unable to informally resolve any dispute concerning the terms of this Agreement, the dispute will be settled in binding arbitration by an arbitrator chosen by consent of both parties.

18. INSURANCE

RECIPIENT will provide DOC with proof of current general liability insurance coverage when signing and returning this Agreement for final signature by DOC. RECIPIENT must maintain its policy of general liability insurance throughout the term of this Agreement and provide renewed proof of such coverage to DOC annually with each new Work Project Description.

RECIPIENT'S liability insurance coverage must have a limit of not less than \$1,000,000 per each occurrence with an aggregate limit of at least \$2,000,000.

19. PUBLIC BENEFIT NON-PROFIT

In order to utilize offender work crew services, RECIPIENTS that are non-profits, must be public benefit non-profits, as defined by the federal Internal Revenue Service (IRS). Those that are public benefit non-profits must provide proof to DOC of official IRS designation as a (501)(c)(3) Charitable Organization or a (501)(c)(4) Social Welfare Organization.

The RECIPIENT must provide DOC with proof of its IRS public benefit non-profit designation, with this partially signed Agreement when returning this partially signed Agreement to DOC Contracts and Legal Affairs for the final signature by DOC.

20. CHANGES AND MODIFICATIONS

Changes or modifications to this Agreement shall not be binding unless agreed to in writing by the parties hereto prior to such change or modification. Only the DOC Secretary or designee has the authority to alter, amend, modify, or waive any clause or condition of this Agreement for DOC.

21. WAIVER

Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement is held invalid by any court, such invalidity shall not affect the validity of the other terms and conditions of this Agreement.

23. INTEGRATION

This Agreement contains all the terms and conditions agreed upon by the parties. No understandings or otherwise regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. As used herein, reference to the Agreement shall include this Master Agreement, fully executed amendments to this Agreement, and any Work Project Descriptions executed and attached hereto.

THIS Agreement, consisting of eight (8) pages and one (1) attachment, is executed by the persons signing below who warrant that they have the authority to execute the Agreement.

CITY OF DAYTON

DEPARTMENT OF CORRECTIONS

(Signature)

(Signature)

(Printed Name)

Gary Banning

(Printed Name)

(Title)

Contracts Administrator

(Title)

(Date)

(Date)

Approval on file.

This contract format was approved
by the Office of the Attorney General.

Approved as to Form:

By Tim Lang, Sr. Assistant Attorney General
December 8, 2015

A

WASHINGTON STATE DEPARTMENT OF CORRECTIONS
Corrections Center
Prisons Division CLASS IV Work Project Description

Contract Number: K_____

RECIPIENT: _____

RECIPIENT L&I Account Number: _____

RECIPIENT is: Government Entity State Agency Public Benefit Nonprofit

RECIPIENT Contact: _____ Phone: _____ Email: _____

Department Contact: _____ Phone: _____ Email: _____

DOC offenders will: *(describe the work)*.

Number of offenders on crew: *(insert number)*.

Project Location: _____

Project Period *(One year maximum)*: _____ through _____

Projected Total Number of Crew Hours: _____

Approximate Work Hours: Arrive at _____ a.m. Depart at _____ p.m.

Special Payment Terms. RECIPIENT will pay DOC:

1. Offender gratuity of \$_____ per offender/per hour for services provided;
2. Transportation Costs:
 - a. \$_____ to transport offenders; includes mileage, vehicle wear and tear, fuel, Tacoma Narrows Bridge toll, etc.
3. Other direct and indirect costs \$_____; to include _____.

PPE, Tools and Equipment Provided by:

RECIPIENT: _____

DOC: _____

Hazard Assessment and PPE Selection Worksheet attached? Y N

Additional Terms:

RECIPIENT

DEPARTMENT OF CORRECTIONS

SAMPLE – DO NOT SIGN

Signature

SAMPLE – DO NOT SIGN

Signature of Superintendent

Title

Institution

Date

Date



HAZARD ASSESSMENT CERTIFICATION AND PPE SELECTION WORKSHEET

Facility and Workplace Evaluated				
LOCATIONS/SOURCE/TASK	HAZARDS TYPE (Impact, penetration, chemical, heat, harmful dust, compression, light radiation [e.g., welding, laser], electric shock, high intensity noise, multiple exposures, etc.)	ANALYSIS OF RISK (Low/Medium/High)		PERSONAL PROTECTIVE EQUIPMENT
		Level of Risk	Seriousness of Potential Injury	

I certify that I performed a hazard assessment of the above named workplace. This document constitutes my findings and certification of this hazard assessment. I understand that this document facilitates compliance with the hazard assessment requirements of WAC 296-800-160.

Certifying Signature of Evaluator

Date

Evaluator's Name (Please Print)

Reviewing Safety Officer's Signature

Date

Safety Officer (Please Print)

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: ORIGINAL-Work Unit Supervisor COPY-Safety Officer

L&I Workers Compensation Coverage for Offenders

1. **CLASS IV - Offender Workers - Risk Classification 4908 - L&I coverage is mandatory.**

- a. The state agency, government entity, or public benefit nonprofit corporation (**Recipient**) that will receive offender services must contact its Labor & Industries (L&I) account manager to request that offender risk classification 4908 be added to its L&I account. Once added, L&I will send a written **Rate Notice** to the account holder/Recipient to confirm the addition of that risk classification.
- b. The 2015 base rate for risk classification 4908 is \$0.3359 per offender/per hour worked. (Base rate is before L&I applies the Recipient's own experience modification factor.)

2. **CLASS V - Community Restitution, Work Release, Community Supervision or Community Custody Risk Classification 7203 - L&I coverage for Class V offenders is *optional by law*, but required by the Department of Corrections** for state agencies, government entities, or public benefit nonprofit corporations (**Recipients**) that wish to utilize Class V offender services.

- a. The state agency, government entity, or public benefit nonprofit corporation (**Recipient**) receiving Class V offender services must complete, sign and submit an *Application for Elective Coverage of Excluded Employments* Form to L&I (L&I Form F213-112-000).
- b. The Recipient must check **Box #10 - Community Services 7203** on the Form.
- c. Coverage will be effective the day after the completed form is received by L&I, unless a later date is indicated on the Form. L&I will send a written **Rate Notice** to the account holder/Recipient to confirm the addition of risk classification 7203 to the account holder/Recipient's L&I account.
- d. The 2015 base rate for risk classification 7203 is \$0.4081 per offender/per hour worked. (Base rate is before L&I applies the Recipient's own experience modification factor.)
- e. To cancel elective coverage, the Recipient must complete, sign and submit a *Cancellation of Elective Coverage for Excluded Employments* Form to L&I (L&I Form F213-005-000). Cancellation will be effective 30 days after the completed Form is received by L&I.

To obtain either L&I Form, go to www.lni.wa.gov and search for the form by name or contact your L&I account manager or call L&I at 360-902-4802.

3. **REPORTING and PAYMENTS to L&I**

- a. Once the an offender risk classification is added to the Recipient's L&I account then each quarter the Recipient must report to L&I the total number of hours that offenders worked for the Recipient during the previous quarter.
- b. Recipients must maintain records of offender hours worked (see L&I WAC 296-17-35201).
- c. Recipients must pay offender insurance premiums to L&I quarterly for the total number of hours worked by offenders during the previous quarter.
- d. Offender work hours and L&I premiums are reported and paid on the same schedule.

4. **RECIPIENT'S RATE NOTICE REQUIRED BY DOC**

Every Recipient of Class IV or Class V offender services must provide DOC with a copy of the Rate Notice that it receives from L&I as proof to DOC that Risk Classification 4908 or 7203 was added to the Recipient's L&I Account. Such proof must be provided before DOC will sign the Recipient's Master Work Crew Agreement.

The Recipient's L&I Rate Notice should be emailed to DOC at the same time that the Recipient sends its signed Master Work Crew Agreement to DOC Contracts and Legal Affairs for signature by DOC.



Project: General Engineering Services 1/11/2016 – 12/31/2017

Part I. PARTIES

THIS AGREEMENT is made on the 11th day of January 2016 between THE CITY OF DAYTON, (the CLIENT) and ANDERSON PERRY & ASSOCIATES, INC. (the ENGINEER). This Agreement shall terminate on December 31, 2017. Now, therefore, the CLIENT and ENGINEER agree as follows:

Part II. ENGINEERING SERVICES

- A. The CLIENT hereby authorizes the ENGINEER, acting as an independent contractor, to perform engineering services on a variety of projects on an as requested basis. The scope of each task will be defined in writing by the CLIENT or ENGINEER as applicable. If requested by the CLIENT, the scope and cost shall be documented in an Amendment to this Agreement. Known tasks are defined in the attached Task Order No. 1.
- B. The CLIENT will provide the following to the ENGINEER: Direction and authorization for each project.
- C. Additional Provisions: N/A

Part III. BASIS OF FEE AND BILLING SCHEDULE

In consideration for performing said services, the CLIENT agrees to compensate the ENGINEER as follows: Unless otherwise determined for a specific task, the work will be invoiced on an hourly basis in accordance with the hourly fee schedule in use at the time the work is performed. A copy of the current hourly fee schedule is attached. Each project will be tracked and invoiced separately.

Billings will be submitted monthly based upon actual services performed. Accounts are due 30 days from the date of billing. A service charge of 10 percent interest per annum will be charged on all past due accounts. Interest to start 30 days from the date the billing is mailed. The ENGINEER may suspend work under this Agreement until the account is paid in full.

THE TERMS AND CONDITIONS ON THE REVERSE SIDE ARE PART OF THIS AGREEMENT.

This Agreement executed on the day and year first above written.

ENGINEER
Anderson Perry & Associates, Inc.

CLIENT
City of Dayton

Wm. Howard Boggs, S.E.T.
Name

Craig George
Name

Signature

Signature

Technical Manager
Title

Mayor
Title

TASK ORDER NO. 1
General Engineering Services

This Task Order No. 1 shall be attached to and become a permanent part of the Agreement for General Engineering Services entered into by and between the City of Dayton (CLIENT) and Anderson Perry & Associates, Inc. (ENGINEER) on January 11, 2016.

The Scope of Work for this Task Order consists of providing miscellaneous engineering services on North Front Street and South First Street. Specific tasks are defined and addressed below.

TASK 1 – NORTH FRONT STREET OVERLAY DESIGN ENGINEERING
JOB NO. 918-130, BILLING GROUP 060

Engineering Services

Design the improvements as outlined in the Transportation Improvement Board (TIB) Consultant Agreement.

Compensation

The CLIENT will compensate the ENGINEER as outlined in the TIB Consultant Agreement.

TASK 2 – NORTH FRONT STREET DRAIN LINE REPLACEMENT DESIGN ENGINEERING
JOB NO. 918-130, BILLING GROUP 061

Engineering Services

Design a replacement drain line in North Front Street from Dayton Avenue to the discharge point in Patit Creek. The pipe serves as the overflow from the water standpipe north of the City and as a stormwater transmission line. As part of the work, catch basins and storm drain lines will be replaced and added at intersections as applicable. The improvements will be included as a separate bid schedule in the plans and specifications defined in Task 1. The ENGINEER will assist the CLIENT with any required permits.

Compensation

The CLIENT will compensate the ENGINEER on a lump sum basis of \$9,000.

TASK 3 – NORTH FRONT STREET PATIT CREEK BRIDGE EVALUATION AND LOAD RATING
JOB NO. 918-130, BILLING GROUP 020

Engineering Services

The ENGINEER will provide an Engineering Report that includes the following:

- Bridge load rating
- Overall condition assessment of the bridge and connected features (i.e., wingwalls, railing, pedestrian crossing, etc.)
- List of areas where repairs are needed including levels of urgency
- Potential costs for needed repairs
- Determine if any of the repairs will impact the planned 2016 North Front Street Overlay project

The ENGINEER will utilize existing information available for the bridge such as photos, past inspection reports, etc. as well as complete an on-site inspection and perform any calculations necessary for

preparing the Engineering Report. Copies of applicable calculations and previous information will be attached to the report.

The ENGINEER will use a subconsultant for the majority of these services.

Compensation

The CLIENT will compensate the ENGINEER on a time and materials basis not to exceed \$12,000.

**TASK 4 – NORTH FRONT STREET OVERLAY CONSTRUCTION ENGINEERING
JOB NO. 918-130, BILLING GROUP 070**

Engineering Services

These services will be added by supplement at the time of the bid opening using the TIB Consultant Supplemental Agreement form.

Compensation

The CLIENT will compensate the ENGINEER as outlined in the TIB Consultant Supplemental Agreement.

**TASK 5 – NORTH FRONT STREET DRAIN LINE REPLACEMENT CONSTRUCTION ENGINEERING
JOB NO. 918-130, BILLING GROUP 071**

Engineering Services

Provide observation and administrative services for construction work related to the drain line during the construction of the North Front Street Overlay Project. The work shall include the following types of services:

- Assist the CLIENT with the award of the construction contract
- Coordinate and attend a preconstruction conference
- Provide observation of the drain line construction activities
- Review submittals and other construction related documents
- Measure quantities
- Keep the CLIENT informed concerning construction progress
- Attend construction meetings
- Review contractor application for payments
- Review and make recommendations on change order requests as needed
- Participate in pre-final and final inspections
- Prepare record drawings based on information provided by the contractor, CLIENT, and ENGINEER's representative
- Assist the CLIENT with closeout paperwork

Compensation

The CLIENT will compensate the ENGINEER on a time and materials basis not to exceed \$9,000.

**TASK 6 – SOUTH FIRST STREET RECONSTRUCTION DESIGN ENGINEERING
JOB NO. 918-131, BILLING GROUP 060**

Engineering Services

Design the improvements as outlined in the TIB Consultant Agreement.

Compensation

The CLIENT will compensate the ENGINEER as outlined in the TIB Consultant Agreement.

**TASK 7 – SOUTH FIRST STREET UTILITY IMPROVEMENTS DESIGN ENGINEERING
JOB NO. 918-131, BILLING GROUP 061****Engineering Services**

Design the replacement or relining of the existing sanitary sewer main line and services, the replacement of water services, and the replacement of water valves and fire hydrants on an as needed basis from Main Street to Oak Street. The improvements will be included as separate bid schedules in the plans and specifications for Task 6.

Compensation

The CLIENT will compensate the ENGINEER on a time and materials basis not to exceed \$16,000.

**TASK 8 – SOUTH FIRST STREET RECONSTRUCTION CONSTRUCTION ENGINEERING
JOB NO. 918-131, BILLING GROUP 070****Engineering Services**

These services will be added by supplement at the time of the bid opening using the TIB Consultant Supplemental Agreement form.

Compensation

The CLIENT will compensate the ENGINEER as outlined in the TIB Consultant Supplemental Agreement.

**TASK 9 – SOUTH FIRST STREET UTILITY IMPROVEMENTS CONSTRUCTION ENGINEERING
JOB NO. 918-131, BILLING GROUP 071****Engineering Services**

Provide observation and administrative services for construction work related to the sewer and water system improvements during construction of the South First Street Reconstruction Project. The work shall include the following types of services:

- Assist the CLIENT with the award of the construction contract
- Coordinate and attend a preconstruction conference
- Provide observation of the drain line construction activities
- Review submittals and other construction related documents
- Measure quantities
- Keep the CLIENT informed concerning construction progress
- Attend construction meetings
- Review contractor application for payments
- Review and make recommendations on change order requests as needed
- Participate in pre-final and final inspections
- Prepare record drawings based on information provided by the contractor, CLIENT, and ENGINEER's representative
- Assist the CLIENT with closeout paperwork

Compensation

The CLIENT will compensate the ENGINEER on a time and materials basis, not-to-exceed \$10,000.

This Task Order No. 1 is executed on the date shown below.

CITY: City of Dayton

ENGINEER: Anderson Perry & Associates, Inc.

By: _____

By: _____

Name: Craig George

Name: Wm. Howard Boggs, S.E.T.

Title: Mayor

Title: Technical Manager

Date: _____

Date: _____



Transportation Improvement Board (TIB)
Consultant Agreement

TIB PROJECT NUMBER 2-E-924(004)-1	PROJECT PHASE (check one) <input checked="" type="checkbox"/> Design <input type="checkbox"/> Construction
PROJECT TITLE & WORK DESCRIPTION City of Dayton - Front Street Overlay Design the overlay and ADA improvements from Main Street to Dayton Avenue.	
CONSULTANT NAME & ADDRESS Anderson Perry & Associates, Inc. 214 E. Birch Street, Walla Walla, WA 99362	
AGREEMENT TYPE (check one)	
<input checked="" type="checkbox"/> LUMP SUM \$26,000.00 <input type="checkbox"/> COST PLUS FIXED FEE	
OVERHEAD COST METHOD <input type="checkbox"/> Actual Cost <input type="checkbox"/> Actual Cost Not To Exceed _____ % <input type="checkbox"/> Fixed Rate _____ %	
OVERHEAD PROGRESS PAYMENT RATE _____ % FIXED FEE \$ _____	
<input type="checkbox"/> SPECIFIC RATES OF PAY	
<input type="checkbox"/> COST PER UNIT WORK	
DBE PARTICIPATION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No _____ %	WBE PARTICIPATION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No _____ %
COMPLETION DATE December 31, 2016	MAXIMUM AMOUNT PAYABLE \$26,000.00

THIS AGREEMENT, made and entered into this 11th day of January, 2016, between the City of Dayton, Washington, hereinafter called the AGENCY, and the above organization hereinafter called the CONSULTANT. The Transportation Improvement Board hereinafter called the TIB, administers the following accounts: Urban Arterial Trust Account funds, Transportation Improvement Account funds, Small City Account funds, and City Hardship Assistance Account funds.

WITNESSETH THAT:

WHEREAS, the AGENCY desires to accomplish the above referenced project, with the aid of TIB funds in conformance with the rules and regulations promulgated by the TIB; and

WHEREAS, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

**I
GENERAL DESCRIPTION OF WORK**

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

**II
SCOPE OF WORK**

The Scope of Work and project level of effort for this project is detailed in Exhibit B attached hereto, and by this reference made a part of this AGREEMENT.

**III
GENERAL REQUIREMENTS**

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the AGENCY.

The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit B attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women-owned Business Enterprises (WBE) if required shall be shown in the heading of this Agreement.

The original copies of all reports, PS&E, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for the PROJECT and are property of the AGENCY. Reuse by the AGENCY or by others acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability of legal exposure to the CONSULTANT.

**IV
TIME FOR BEGINNING AND COMPLETION**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY, in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

**V
PAYMENT**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit C attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, Scope of Work.

**VI
SUBCONTRACTING**

The AGENCY permits subcontracts for those items of work as shown in Exhibit G to this Agreement. Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit G, attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and subcontractor, any contract or any other relationship.

**VII
EMPLOYMENT**

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may or might arise under any Worker's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

**VIII
NONDISCRIMINATION**

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, layoffs or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the AGENCY and further that the CONSULTANT shall be barred from performing any services for the AGENCY now or in the future unless a showing is made satisfactory to the AGENCY that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

- A. COMPLIANCE WITH REGULATIONS: The CONSULTANT shall comply with the Regulations relative to nondiscrimination in the same manner as in



Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this AGREEMENT.

Executive Orders numbered E.O.70-01 and E.O.66-03 of the Governor of the State of Washington.

**IX
 TERMINATION OF AGREEMENT**

- B. **NONDISCRIMINATION:** The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, creed, color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. **SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. **INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AGENCY or TIB to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the AGENCY, or the TIB as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **SANCTIONS FOR NONCOMPLIANCE:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, the AGENCY shall impose such sanctions as it or the Transportation Improvement Board may determine to be appropriate, including, but not limited to:
 - 1. Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
 - 2. Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
- F. **INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the AGENCY or the Transportation Improvement Board may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY to enter into such litigation to protect the interests of the AGENCY, and in addition, the CONSULTANT may request the TIB to enter into such litigation to protect the interests of the TIB.
- G. **UNFAIR EMPLOYMENT PRACTICES:** The CONSULTANT shall comply with RCW 49.60.180 prohibiting unfair employment practices and the

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit F for the type of AGREEMENT used.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice of Termination. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

In the event the services of the CONSULTANT are terminated by the AGENCY for fault on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination; the cost to the AGENCY of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without it or its employees fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

In the event this AGREEMENT is terminated prior to completion, the original copies of all reports and other data, PS&E materials furnished to the CONSULTANT by the AGENCY and documents prepared by the CONSULTANT prior to said termination, shall become and remain the property of the AGENCY and may be used by it without restriction. Such unrestricted use, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT

for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

**X
CHANGES OF WORK**

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

**XI
DISPUTES**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to the scope of judicial review provided under Washington Case Law.

**XII
VENUE, APPLICABLE LAW AND
PERSONAL JURISDICTION**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in the county the AGENCY is located in. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county the AGENCY is located in.

**XIII
LEGAL RELATIONS AND INSURANCE**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE of Washington, and their officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY and the STATE against and hold harmless the AGENCY and the STATE from claims, demands or suits based solely upon the conduct of the AGENCY and the STATE, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the AGENCY and the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the AGENCY and the STATE of defending such claims and suits, etc. shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The CONSULTANT recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

A. Worker's compensation and employer's liability insurance as required by the STATE.

B. General commercial liability insurance in an amount not less than a single limit of one million and 00/100 Dollars (\$1,000,000.00) for bodily injury, including death and property damage per occurrence.

Excepting the Worker's Compensation insurance and any professional liability insurance secured by the CONSULTANT, the AGENCY will be named on all certificates of insurance as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within 14 days of the execution of this AGREEMENT to the AGENCY. No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million dollars, whichever is the greater unless modified by Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

**XIV
EXTRA WORK**

A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.

- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any proposal for adjustment (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a proposal submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (a) and (b) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

**XV
ENDORSEMENT OF PLANS**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

**XVI
TIB AND AGENCY REVIEW**

The AGENCY and TIB shall have the right to participate in the review or examination of the work in progress.

**XVII
CERTIFICATION OF THE
CONSULTANT AND THE AGENCY**

Attached hereto as Exhibit A-1, are the Certifications of the Consultant and the Agency.

**XVIII
COMPLETE AGREEMENT**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XIX
EXECUTION AND ACCEPTANCE**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof the parties hereto have executed this AGREEMENT as of the day and year first above written.

By _____ By _____
Consultant Anderson Perry & Associates, Inc. City Dayton, Washington

EXHIBIT A-1 Certification of Consultant

Project No. 2-E-924(004)-1	City/County City of Dayton, Washington
--------------------------------------	--

I hereby certify that I am **Wm. Howard Boggs** a duly authorized representative of the firm of **Anderson Perry & Associates, Inc.** whose address is **PO Box 1687/214 E. Birch Street, Walla Walla, WA 99362** and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract.
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of a firm or person in connection with carrying out the contract.
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with procuring or carrying out the contract; except as here expressly stated (if any):

I further certify that the firm I hereby represent is authorized to do business in the State of Washington and that the firm is in full compliance with requirements of the Board of Professional Registration.

I acknowledge that this certificate is to be available to the Transportation Improvement Board (TIB), in connection with this contract involving participation of TIB funds and is subject to applicable State and Federal laws, both criminal and civil.

Date *Signature*

Certification of Agency Official

I hereby certify that I am the AGENCY Official of the **City of Dayton, Washington** and that the above consulting firm or his/her representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ or retain, or agree to employ or retain, any firm or person, or
- (b) Pay or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind, except as here expressly stated (if any).

I acknowledge that this certificate is to be available to the TIB, in connection with this contract involving participation of TIB funds and is subject to applicable State and Federal laws, both criminal and civil.

Date *Signature*



EXHIBIT B-1 Scope of Work

Project No.

2-E-924(004)-1

Describe the Scope of Work

The work consists of the design and preparation of construction bidding documents for the overlay of North Front Street from Main Street to Dayton Avenue. The entire project is located within the city limits of Dayton, Washington.

The CONSULTANT shall provide plans, specifications, engineer's estimate, and complete bid documents necessary for the construction of the project.

The work shall include the following:

- Coordinate a project development schedule with the City and deliver all products within the mutually developed schedule.
- Conduct field surveys and prepare a design survey base map.
- Communications with the adjacent property owners and attend an Informational meeting.
- Investigate as needed the existing pavement cross section. The agency will evacuate and backfill the test pits, if needed.
- If necessary, prepare for and attend up to two City Council meetings for the project.
- Design roadway improvements including handicap ramps with related curb and sidewalk removal and replacements, storm drainage systems, overlays, and other related facilities included in the funding application.
- It is anticipated that the project will be categorically exempt from SEPA. Since there is no in-stream work, a JARPA application should not be needed. Therefore, assistance is not included for these items.
- The project will be bid with enough time to allow for the contractor to obtain a Stormwater Permit from the Department of Ecology, should it be required.
- Submit project information including the recent Environmental Report to the Washington State Office of Archaeology and Historic Preservation. (This task does not include preparation of a cultural resource survey.)

Design features shall include:

- The roadway surface shall be designed to the Standards as listed in the TIB application and WSDOT Local Agency Guidelines.
- Replacement of curb and gutter and sidewalk shall be as per City Standard Plans, where required.
- ADA compliant ramps shall be included at each street crossing.
- The existing storm drainage system and reservoir overflow pipe within the project boundaries shall be improved as part of this project. The design and construction will be paid for by the City.

Documents to be Furnished by the Consultant

1. Up to two (2) sets of preliminary road plans for review of approximately 30 percent and 90 percent completion stage of the project for review.
2. Two (2) sets of bidding documents with engineer's estimate for final review and authorization to advertise for bids. One set each for the City and TIB.
3. Up to five (5) sets of final bidding documents and an engineer's estimate for the Agency's use.
4. Up to 50 sets of bidding documents to be provided to plan centers, potential bidders, and the successful bidder. Plan sets may be provided on CD instead of paper copies if requested.

The AGENCY, at their option, may supplement this Agreement to include construction administration services.

EXHIBIT C-1
Payment
(Lump Sum)

A. Lump Sum Agreement

Payment for all consulting services for this project shall be on the basis of a lump sum amount as shown in the heading of this AGREEMENT.

The maximum amount payable, by the AGENCY to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT as maximum amount payable unless a supplemental agreement has been negotiated and executed by the AGENCY prior to incurring any costs in excess of the maximum amount payable.

B. Monthly Progress Payments

Partial payments may be made upon request of the CONSULTANT to cover the percentage of work completed and are not to be more frequent than one (1) per month.

C. Final Payment

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT contingent upon receipt of all PS&E, plans, maps notes, reports, and other related documents which are required to be furnished under the AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

D. Inspection of Cost Records

The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the AGENCY and/or the TIB for a period of three years after final payment the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim or audit involving the records is completed.

Exhibit D-1
Consultant Fee Determination Summary Sheet
(Lump Sum, Cost Plus Fixed Fee, Cost per Unit of Work)

Project: North Front Street
Prepared By: Wm. Howard Boggs
Date: December 10, 2015

DESIGN ENGINEERING

Anticipated Staff Classification	Estimated Work Hours		Rate	=	Cost
Senior Drafting Technician III	30	x	\$100	=	\$3,000
Senior Drafting Technician IV	60	x	\$105	=	\$6,300
Senior Engineering Technician VII (Project Manager)	55	x	\$160	=	\$8,800
Staff Engineer II	45	x	\$95	=	\$4,275
Senior Engineer IV (Principal)	2	x	\$150	=	\$300
Project Engineer II	2	x	\$115	=	\$230
Survey Technician II	8	x	\$60	=	\$480
Survey Technician IV	16	x	\$80	=	\$1,280
Professional Land Surveyor IV	5	x	\$125	=	\$625
			Subtotal	=	\$25,290
			Reimbursables (mileage, robotic survey station, etc.)	=	\$710
			Estimated Design Engineering Total	=	\$26,000
			LUMP SUM FEE	=	\$26,000

EXHIBIT F-1
Payment Upon Termination of Agreement
by the Agency Other than for Fault of the Consultant
(Refer to Agreement, Section IX)

Lump Sum Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Cost Plus Fixed Fee Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Specific Rates of Pay Contracts

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus and direct nonsalary costs incurred at the time of termination of this AGREEMENT.

Cost Per Unit of Work Contracts

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

**EXHIBIT G-1
Subcontracted Work**

The AGENCY permits subcontracts for the following portions of the work of this AGREEMENT:

Not Applicable



Transportation Improvement Board (TIB)
Consultant Agreement

TIB PROJECT NUMBER 6-E-924(006)-1		PROJECT PHASE (check one) <input checked="" type="checkbox"/> Design <input type="checkbox"/> Construction	
PROJECT TITLE & WORK DESCRIPTION City of Dayton - South First Street Reconstruction Design the reconstruction and modifications from Main Street to Oak Street			
CONSULTANT NAME & ADDRESS Anderson Perry & Associates, Inc. 214 E. Birch Street, Walla Walla, WA 99362			
AGREEMENT TYPE (check one)			
<input checked="" type="checkbox"/> LUMP SUM \$80,000.00		OVERHEAD PROGRESS PAYMENT RATE _____ %	
<input type="checkbox"/> COST PLUS FIXED FEE		OVERHEAD COST METHOD	
		<input type="checkbox"/> Actual Cost	
		<input type="checkbox"/> Actual Cost Not To Exceed _____ %	
		<input type="checkbox"/> Fixed Rate _____ %	
FIXED FEE \$ _____			
<input type="checkbox"/> SPECIFIC RATES OF PAY		<input type="checkbox"/> Negotiated Hourly Rate	
		<input type="checkbox"/> Provisional Hourly Rate	
<input type="checkbox"/> COST PER UNIT WORK			
DBE PARTICIPATION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No _____ %		WBE PARTICIPATION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No _____ %	
COMPLETION DATE December 31, 2017		MAXIMUM AMOUNT PAYABLE \$80,000.00	

THIS AGREEMENT, made and entered into this 11th day of **January, 2016**, between the **City of Dayton, Washington**, hereinafter called the AGENCY, and the above organization hereinafter called the CONSULTANT. The Transportation Improvement Board hereinafter called the TIB, administers the following accounts: Urban Arterial Trust Account funds, Transportation Improvement Account funds, Small City Account funds, and City Hardship Assistance Account funds.

WITNESSETH THAT:

WHEREAS, the AGENCY desires to accomplish the above referenced project, with the aid of TIB funds in conformance with the rules and regulations promulgated by the TIB; and

WHEREAS, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I
GENERAL DESCRIPTION OF WORK

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

II
SCOPE OF WORK

The Scope of Work and project level of effort for this project is detailed in Exhibit B attached hereto, and by this reference made a part of this AGREEMENT.

**III
GENERAL REQUIREMENTS**

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the AGENCY.

The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit B attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women-owned Business Enterprises (WBE) if required shall be shown in the heading of this Agreement.

The original copies of all reports, PS&E, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for the PROJECT and are property of the AGENCY. Reuse by the AGENCY or by others acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability of legal exposure to the CONSULTANT.

**IV
TIME FOR BEGINNING AND COMPLETION**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY, in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

**V
PAYMENT**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit C attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, Scope of Work.

**VI
SUBCONTRACTING**

The AGENCY permits subcontracts for those items of work as shown in Exhibit G to this Agreement. Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit G, attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and subcontractor, any contract or any other relationship.

**VII
EMPLOYMENT**

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may or might arise under any Worker's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANTs employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

**VIII
NONDISCRIMINATION**

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, layoffs or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the AGENCY and further that the CONSULTANT shall be barred from performing any services for the AGENCY now or in the future unless a showing is made satisfactory to the AGENCY that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

- A. COMPLIANCE WITH REGULATIONS: The CONSULTANT shall comply with the Regulations relative to nondiscrimination in the same manner as in



Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this AGREEMENT.

Executive Orders numbered E.O.70-01 and E.O.66-03 of the Governor of the State of Washington.

IX

TERMINATION OF AGREEMENT

- B. **NONDISCRIMINATION:** The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, creed, color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. **SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. **INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AGENCY or TIB to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the AGENCY, or the TIB as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **SANCTIONS FOR NONCOMPLIANCE:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, the AGENCY shall impose such sanctions as it or the Transportation Improvement Board may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or
 2. Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
- F. **INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the AGENCY or the Transportation Improvement Board may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY to enter into such litigation to protect the interests of the AGENCY, and in addition, the CONSULTANT may request the TIB to enter into such litigation to protect the interests of the TIB.
- G. **UNFAIR EMPLOYMENT PRACTICES:** The CONSULTANT shall comply with RCW 49.60.180 prohibiting unfair employment practices and the

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit F for the type of AGREEMENT used.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice of Termination. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

In the event the services of the CONSULTANT are terminated by the AGENCY for fault on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination; the cost to the AGENCY of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without it or its employees fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

In the event this AGREEMENT is terminated prior to completion, the original copies of all reports and other data, PS&E materials furnished to the CONSULTANT by the AGENCY and documents prepared by the CONSULTANT prior to said termination, shall become and remain the property of the AGENCY and may be used by it without restriction. Such unrestricted use, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT

for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

**X
CHANGES OF WORK**

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

**XI
DISPUTES**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to the scope of judicial review provided under Washington Case Law.

**XII
VENUE, APPLICABLE LAW AND
PERSONAL JURISDICTION**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in the county the AGENCY is located in. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county the AGENCY is located in.

**XIII
LEGAL RELATIONS AND INSURANCE**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE of Washington, and their officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY and the STATE against and hold harmless the AGENCY and the STATE from claims, demands or suits based solely upon the conduct of the AGENCY and the STATE, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the AGENCY and the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the AGENCY and the STATE of defending such claims and suits, etc. shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The CONSULTANT recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

A. Worker's compensation and employer's liability insurance as required by the STATE.

B. General commercial liability insurance in an amount not less than a single limit of one million and 00/100 Dollars (\$1,000,000.00) for bodily injury, including death and property damage per occurrence.

Excepting the Worker's Compensation insurance and any professional liability insurance secured by the CONSULTANT, the AGENCY will be named on all certificates of insurance as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within 14 days of the execution of this AGREEMENT to the AGENCY. No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million dollars, whichever is the greater unless modified by Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

**XIV
EXTRA WORK**

A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.



- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any proposal for adjustment (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a proposal submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (a) and (b) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

**XV
ENDORSEMENT OF PLANS**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

**XVI
TIB AND AGENCY REVIEW**

The AGENCY and TIB shall have the right to participate in the review or examination of the work in progress.

**XVII
CERTIFICATION OF THE
CONSULTANT AND THE AGENCY**

Attached hereto as Exhibit A-1, are the Certifications of the Consultant and the Agency.

**XVIII
COMPLETE AGREEMENT**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XIX
EXECUTION AND ACCEPTANCE**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof the parties hereto have executed this AGREEMENT as of the day and year first above written.

By _____ By _____

Consultant Anderson Perry & Associates, Inc. City Dayton, Washington



EXHIBIT A-1 Certification of Consultant

Project No. 6-E-924(006)-1	City/County City of Dayton, Washington
--------------------------------------	--

I hereby certify that I am **Wm. Howard Boggs** a duly authorized representative of the firm of **Anderson Perry & Associates, Inc.** whose address is **PO Box 1687/214 E. Birch Street, Walla Walla, WA 99362** and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract.
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of a firm or person in connection with carrying out the contract.
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation or consideration of any kind for, or in connection with procuring or carrying out the contract; except as here expressly stated (if any):

I further certify that the firm I hereby represent is authorized to do business in the State of Washington and that the firm is in full compliance with requirements of the Board of Professional Registration.

I acknowledge that this certificate is to be available to the Transportation Improvement Board (TIB), in connection with this contract involving participation of TIB funds and is subject to applicable State and Federal laws, both criminal and civil.

_____ Date

_____ Signature

Certification of Agency Official

I hereby certify that I am the AGENCY Official of the **City of Dayton, Washington** and that the above consulting firm or his/her representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ or retain, or agree to employ or retain, any firm or person, or
- (b) Pay or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind, except as here expressly stated (if any).

I acknowledge that this certificate is to be available to the TIB, in connection with this contract involving participation of TIB funds and is subject to applicable State and Federal laws, both criminal and civil.

_____ Date

_____ Signature

EXHIBIT B-1 Scope of Work

Project No.

6-E-924(006)-1

Describe the Scope of Work

The work consists of the design and preparation of construction bidding documents for the reconstruction of South First Street from Main Street to Oak Street. The entire project is located within the city limits of Dayton, Washington.

The CONSULTANT shall provide plans, specifications, engineer's estimate, and complete bid documents necessary for the construction of the project.

The work shall include the following:

- Coordinate a project development schedule with the City and deliver all products within the mutually developed schedule.
- Conduct field surveys and prepare a design survey base map.
- Communications with the adjacent property owners and attend an informational meeting.
- Perform soils investigations as needed for determining the subgrade condition and groundwater levels for subsurface stormwater disposal. The agency will evacuate and backfill the test pits.
- If necessary, prepare for and attend up to 3 City Council meetings for the project.
- Design roadway improvements including curb and gutters, sidewalks, handicap ramps, storm drainage systems, and other related facilities included in the funding application.
- It is anticipated that the project will be categorically exempt from SEPA. Since there is no in-stream work, a JARPA application should not be needed. Therefore, assistance is not included for these items.
- The project will be bid with enough time to allow for the contractor to obtain a Stormwater Permit from the Department of Ecology.
- Submit project information including the recent Environmental Report to the Washington State Office of Archaeology and Historic Preservation. (This task does not include preparation of a cultural resource survey.)

Design features shall include:

- The roadway shall be designed to the Standards as listed in the TIB application and WSDOT Local Agency Guidelines.
- Design speed shall be 30 mph.
- Curb-to-curb width shall be approximately 44 feet as described in the funding applications.
- New sidewalks shall be installed as described in the funding application.
- ADA compliant ramps shall be included at each street crossing.
- Permanent signage and pavement markings
- Some of the existing storm drain facilities will remain. New inlets, pipes, and disposal systems shall be added as applicable.
- The existing sanitary sewer main and service lines shall be lined and/or replaced as applicable as part of the project. The design and construction will be paid for by the City.
- Water service lines, water valves, and fire hydrants will be replaced as applicable as part of the project. The design and construction will be paid for by the City.



Documents to be Furnished by the Consultant

1. Up to two (2) sets of preliminary road plans for review of approximately 30 percent and 90 percent completion stage of the project for review.
2. Storm Drainage Report which may be incorporated into the drawings.
3. Two (2) sets of bidding documents with engineer's estimate for final review and authorization to advertise for bids. One set each for the City and TIB.
4. Up to five (5) sets of final bidding documents and an engineer's estimate for the Agency's use.
5. Up to 50 sets of bidding documents to be provided to plan centers, potential bidders, and the successful bidder. Plan sets may be provided on CD instead of paper copies if requested.

The AGENCY, at their option, may supplement this Agreement to include construction administration services.

EXHIBIT C-1
Payment
(Lump Sum)

A. Lump Sum Agreement

Payment for all consulting services for this project shall be on the basis of a lump sum amount as shown in the heading of this AGREEMENT.

The maximum amount payable, by the AGENCY to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT as maximum amount payable unless a supplemental agreement has been negotiated and executed by the AGENCY prior to incurring any costs in excess of the maximum amount payable.

B. Monthly Progress Payments

Partial payments may be made upon request of the CONSULTANT to cover the percentage of work completed and are not to be more frequent than one (1) per month.

C. Final Payment

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT contingent upon receipt of all PS&E, plans, maps notes, reports, and other related documents which are required to be furnished under the AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

D. Inspection of Cost Records

The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the AGENCY and/or the TIB for a period of three years after final payment the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim or audit involving the records is completed.

Exhibit D-1
Consultant Fee Determination Summary Sheet
(Lump Sum, Cost Plus Fixed Fee, Cost per Unit of Work)

Project: South First Street Reconstruction
Prepared By: Wm. Howard Boggs
Date: December 10, 2015

DESIGN ENGINEERING

Anticipated Staff Classification	Estimated Work Hours		Rate		Cost
Senior Natural Resources Technician I	20	x	\$85		\$1,700
Senior Drafting Technician III	100	x	\$100	=	\$10,000
Senior Drafting Technician IV	100	x	\$105	=	\$10,500
Senior Engineering Technician VII (Project Manager)	150	x	\$160	=	\$24,000
Staff Engineer II	250	x	\$95	=	\$23,750
Senior Engineer IV (Principal)	5	x	\$150	=	\$750
Project Engineer II	8	x	\$115	=	\$920
Survey Technician II	20	x	\$60	=	\$1,200
Survey Technician IV	40	x	\$80	=	\$3,200
Professional Land Surveyor IV	10	x	\$125	=	\$1,250
			Subtotal	=	\$77,270
			Reimbursables (mileage, robotic survey station, etc.)	=	\$2,730
			Estimated Design Engineering Total	=	\$80,000
			LUMP SUM FEE	=	<u>\$80,000</u>

EXHIBIT F-1
Payment Upon Termination of Agreement
by the Agency Other than for Fault of the Consultant
(Refer to Agreement, Section IX)

Lump Sum Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Cost Plus Fixed Fee Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Specific Rates of Pay Contracts

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus and direct nonsalary costs incurred at the time of termination of this AGREEMENT.

Cost Per Unit of Work Contracts

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

**EXHIBIT G-1
Subcontracted Work**

The AGENCY permits subcontracts for the following portions of the work of this AGREEMENT:

Not Applicable