



**DAYTON CITY COUNCIL**  
**REGULAR MEETING**  
111 S. 1<sup>ST</sup> Street, Dayton, WA 99328

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**PRELIMINARY AGENDA**

**August 28, 2017**

**7:00 p.m.**

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**1. CALL TO ORDER**

- A. Roll Call

**2. CONSENT AGENDA – Action**

- A. Approval of Minutes:
  - i. July 24, 2017
  - ii. August 14, 2017
- B. Approval of Voucher Warrants as audited by the Finance Committee: 44636 – 44640 = \$337,657.68
- C. Approval of Payroll Warrants: 44605 – 44633 = 35,750.20
- D. Confirm Mayor's execution of the Local Agency Counsel Engagement Letter for services associated with the Washington State Treasurer's LOCAL Program Financing Contract not to exceed \$1,200

**3. SPECIAL GUESTS AND PUBLIC COMMENT**

**4. COMMITTEE/BOARD/COMMISSION REPORTS**

**5. REPORTS OF CITY OFFICERS**

- A. 2018 Hotel/Motel Lodging Tax Applications available online

**6. UNFINISHED BUSINESS**

- A. Action: Adopt Ordinance No. 1919 - An Ordinance of the City Council of the City of Dayton, Washington, Authorization for the Acquisition of Personal Property and Execution of a Financing Contract and Related Documentation Relating to the Acquisition of Said Personal Property (Street Sweeper)

**7. NEW BUSINESS**

- A. Action: Authorize Resolution No. 1320 – An Interlocal Agreement with Columbia County for Temporary Planning Services
- B. Action: Authorize Resolution No. 1321 – An Interlocal Agreement with Columbia County to Share Costs of Flood Control Zone District Consultant
- C. Action: Authorize Resolution No. 1322 – A Separation Package Agreement with Karen Scharer
- D. Action: Authorize the Promulgation Agreement with Columbia County and the Town of Starbuck adopting the 2017 Columbia County Comprehensive Emergency Manage Plan as the official guiding document in the event of a major disaster/emergency

**8. FINAL PUBLIC COMMENT**

**9. ADJOURN**

Next Regular Meeting: **September 13, 2017** at **7:00 p.m.** at Dayton City Hall, 111 S. 1<sup>st</sup> Street, Dayton, WA 99328.

July 24, 2017 Meeting Minutes will be available 08/23/2017

## **DAYTON CITY COUNCIL MINUTES**

### **Regular Meeting**

**Monday, August 14, 2017**

**111 S. 1<sup>st</sup> Street**

**Dayton, WA 99328**

#### **1. CALL TO ORDER:** Mayor Craig George calls the meeting to order at approximately 7:00 p.m.

Roll Call:

Present: Mike Paris, Kathy Berg, Dain Nysoe, Christine Broughton, Byron Kaczmariski

Absent: Zac Weatherford, Delphine Bailey

Staff: Jim Costello, Public Works Director; Clint Atteberry, Code Compliance Officer; Trina Cole, City Clerk-Treasurer

#### **2. CONSENT AGENDA:**

ACTION: Broughton makes a motion; Berg seconds the motion, and the motion carries unanimously approving the Consent Agenda as presented:

A. & B. Approve the following vouchers for payment:

A. Claims:	44550 - 44604	\$	117,934.65
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B. Payroll:	44508 – 44549	\$	79,399.08;
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C. Confirm Mayor's authorization of consulting agreement with Utility Services Associates to perform leak detection services not to exceed \$2,991.00.

#### **3. SPECIAL GUESTS/PUBLIC COMMENT**

Justin Nix, Chamber of Commerce Director provides report of 2<sup>nd</sup> Quarter 2017 tourism and promotion activities, upcoming events.

Anne Higgins, Columbia County Emergency Management Representative, provides an overview of the Columbia County Comprehensive Emergency Management Plan.

#### **4. COMMITTEE/BOARD/ COMMISSIONER REPORTS**

**Public Safety** – There is no report.

**Public Works** – Costello reports on the status of the S. 1<sup>st</sup> Street Project and the W. Main Street Sidewalk Project. Nysoe asks that the alleyway behind 207 E. Tremont Street be repaired.

**Finance** – There is no report.

**Parks/Public Grounds** – There is no report.

**Planning/Economic Development** – Council discusses options for planning services and George recommends consolidation of services with Columbia County Planning Department with a 6-month trial period. Commissioner Passmore speaks in support of the consolidation of planning services. Nysoe, with skepticism, Berg, Paris, Broughton, Kaczmariski support a 6-month interlocal agreement. An interim agreement will be provided for consideration at the next regular meeting. There is no action.

**Personnel** – There is no report.

**Emergency Management** – There is no report.

**Chamber of Commerce** – Berg reports annual Chamber Banquest will be November 9.

**Commissioners** – There is no report.

#### **5. REPORTS OF CITY OFFICERS**

**Sheriff** – There is no report.

**Code Compliance** – There is no report.

**Public Works** – There is no report.

**Planning Director** – There is no report.

**City Clerk-Treasurer** – Cole reports that the City will apply for grants through Transportation Improvement Board for pavement preservation treatments to S. 4<sup>th</sup> Street, sections of S. 3<sup>rd</sup> Street and S. 2<sup>nd</sup> Street and overlay for a section of S. 3<sup>rd</sup> Street and the 2018 budget process is underway.

**Mayor Pro-Tempore** – There is no report.

**Mayor** – George reads letter commending Jim, Rob and City Public Works Department for their help on the various community events. He presents a community-wide insurance opportunity for replacement of side sewer and private water lines if the need arises for residences. The program is sanctioned by the National League Cities. There is no action.

#### **6. UNFINISHED BUSINESS**

There is no “Unfinished Business” to discuss.

#### **7. NEW BUSINESS**

Cole states that consideration of Ordinance No. 1919 will be delayed until the next regular meeting for review by legal counsel.

#### **8. FINAL PUBLIC COMMENT**

Jim Kime, 501 E. Richmond Avenue, states that the gravel road leading to the new dog park facility is creating a dust bowl and requests that dog park parking signs be installed.

Mayor George reminds Council that new meeting dates will begin in September and provides a calendar as such.

#### **9. ADJOURN**

With no further business to come before the Council, the regular meeting is adjourned at 7:54 p.m.

City of Dayton

\_\_\_\_\_  
By: Craig George, Mayor

Attested:

Approved:

August 28, 2017

\_\_\_\_\_  
Trina Cole, City Clerk-Treasurer

\_\_\_\_\_  
Date



# Register

Fiscal: 2017  
 Deposit Period: 2017 - August  
 Check Period: 2017 - August - August 28, 2017

Number	Name	Print Date	Clearing Date	Amount
<b>Umpqua Bank</b>	<b>5990067340</b>			
<b>Check</b>				
<u>44636</u>	Anderson Perry & Assoc	8/16/2017		\$1,232.51
<u>44637</u>	Chamber Of Commerce	8/16/2017		\$8,889.00
<u>44638</u>	Moreno & Nelson Construction	8/16/2017		\$135,299.00
<u>44639</u>	Chamber Of Commerce	8/16/2017		\$6,215.26
<u>44640</u>	P.O.W. Contracting, Inc.	8/17/2017		\$186,021.91
		<b>Total</b>	<b>Check</b>	<b>\$337,657.68</b>
		<b>Total</b>	<b>5990067340</b>	<b>\$337,657.68</b>
		<b>Grand Total</b>		<b>\$337,657.68</b>



# Register

Fiscal: 2017  
 Deposit Period: 2017 - August  
 Check Period: 2017 - August - August 14, 2017

Number	Name	Print Date	Clearing Date	Amount
<b>Umpqua Bank Check</b>	<b>5990067340</b>			
<u>44605</u>	Atteberry, Clinton J	8/15/2017		\$1,164.19
<u>44606</u>	Ball, Heather R	8/15/2017		\$951.71
<u>44607</u>	Bowhay, Michael H.	8/15/2017		\$1,615.46
<u>44608</u>	Bryan, Neylan	8/15/2017		\$478.64
<u>44609</u>	Cole, Trina D.	8/15/2017		\$1,902.39
<u>44610</u>	Costello, Camdon P	8/15/2017		\$454.95
<u>44611</u>	Costello, James S.	8/15/2017		\$2,080.51
<u>44612</u>	Dedloff, Angelene R	8/15/2017		\$432.89
<u>44613</u>	Dowdy, Payton	8/15/2017		\$261.17
<u>44614</u>	Elkins, David J.	8/15/2017		\$1,574.65
<u>44615</u>	Fletcher, Lloyd	8/15/2017		\$1,457.56
<u>44616</u>	Fortier, Shaelyn M	8/15/2017		\$555.85
<u>44617</u>	Hays, Debra M.	8/15/2017		\$1,859.94
<u>44618</u>	Hays, Taylor A	8/15/2017		\$785.67
<u>44619</u>	Jenkins, Alex L	8/15/2017		\$483.29
<u>44620</u>	John, Rob	8/15/2017		\$1,408.35
<u>44621</u>	Johnson, Torry Ann	8/15/2017		\$726.29
<u>44622</u>	Moton, Donald G.	8/15/2017		\$1,294.00
<u>44623</u>	Rounsvile, William	8/15/2017		\$774.70
<u>44624</u>	Smay, Ian	8/15/2017		\$634.66
<u>44625</u>	Souza, Marcio	8/15/2017		\$1,125.74
<u>44626</u>	Strickland, Eddie L	8/15/2017		\$1,347.10
<u>44627</u>	Sweetwood, David	8/15/2017		\$1,379.76
<u>44628</u>	Vance, Darien J	8/15/2017		\$110.82
<u>44629</u>	Westergreen, Connie	8/15/2017		\$1,141.54
<u>44630</u>	Wooldridge, Hayden	8/15/2017		\$463.14
<u>44631</u>	Council No. 2	8/15/2017		\$417.37
<u>44632</u>	Internal Revenue Service - U S Treasury	8/15/2017		\$8,526.22
<u>44633</u>	Washington State Support Registry	8/15/2017		\$341.64
	<b>Total</b>		<b>Check</b>	<b>\$35,750.20</b>
	<b>Total</b>		<b>5990067340</b>	<b>\$35,750.20</b>
	<b>Grand Total</b>			<b>\$35,750.20</b>

August 21, 2017

*VIA EMAIL*

City of Dayton  
Attn. Craig George, Mayor  
111 S. 1st Street  
Dayton, WA 99362

**Re: Local Agency Counsel Opinion/LOCAL Program**

Dear Mayor George:

We appreciate the opportunity to serve as Local Agency Counsel to the City of Dayton, Washington (the "City"). The purpose of this engagement letter is to set forth certain matters concerning our duties as Local Agency Counsel to the City in connection with the execution and delivery by the City of the Local Agency Financing Contract (the "Financing Contract"), by and between the State of Washington, acting by and through the State Treasurer, and the City. This letter shall serve as a contract between the City and Foster Pepper PLLC (sometimes referred to herein as "Foster").

**SCOPE OF ENGAGEMENT**

In this engagement, we expect to perform the following duties: (i) subject to the completion of proceedings to our satisfaction, render our legal opinion (the "Opinion") regarding the due adoption of the City Council's ordinance approving the execution and delivery of the Financing Contract and that the Financing Contract has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the City; and (ii) prepare and review documents and legal issues necessary or appropriate to the authorization, issuance and delivery of the Financing Contract.

Our Opinion will be addressed to the City and will be delivered by us on the date the Financing Contract is exchanged for its purchase price (the "Closing"). The Opinion will be based on facts and law existing as of its date. In rendering our Opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the City after the Financing Contract is issued with applicable laws relating to the Financing Contract. During the course of this engagement, we will rely on the City to provide us with complete and timely information on all developments pertaining to any aspect of the Financing Contract and its security. We understand that officials and employees of the City will cooperate with us in this regard.

**ATTORNEY-CLIENT RELATIONSHIP**

Upon execution of this engagement letter, the City will be our client and an attorney-client relationship will exist between us. In this transaction we represent only the City, we are not counsel to any other party (except as described below), and we are not acting as an intermediary among the parties. Our services as Local Agency Counsel regarding the Financing Contract are

limited to those contracted for in this letter. The City's execution of this engagement letter will constitute an acknowledgment of those limitations. Our representation of the City regarding our services as Local Agency Counsel will be concluded upon the issuance of the Financing Contract.

### CONFLICTS

*Financing Contract and State of Washington.* Foster will represent the City as its local agency counsel in connection with the Financing Contract and render a legal opinion that the Financing Contract is a legally valid and binding obligation of the City. Under the State of Washington (the "State") LOCAL program, the State will enter into a Master Financing Contract for the acquisition of personal property for certain local agencies, including the improvements to be acquired and installed for the City. The payments required to be made by the City under its Financing Contract with the State will be a source of payment (among other sources) for the State to make its payments as required under the Master Financing Contract. Foster presently represents the State as certificate counsel and renders a legal opinion that the Master Financing Contract is a legal and valid obligation of the State and that the interest component of certificates of participation in State payments under the Master Financing Contract is excluded from gross income for federal income tax purposes.

The Washington Rules of Professional Conduct prohibit an attorney, and all members of that attorney's firm, from representing a client in a matter which is adverse to the interests of another client of the firm. This is called a conflict of interest. The conflict of interest arises because a lawyer has a duty of loyalty to every client, even if the lawyer is not representing the client in a particular matter. Since Foster will be representing the City as local agency counsel with regard to the Financing Contract and the State as certificate counsel, a conflict of interest is presented.

The Rules of Professional Conduct allow clients to waive conflicts of interest when: (i) the lawyer reasonably believes the representation of the one client will not adversely affect the relationship with the other client; (ii) the representation is not prohibited by law; (iii) the representation does not involve the assertion of claims by one client against another client in a proceeding in which the lawyer representing both clients; and (iv) all clients consent in writing after full disclosure of the material facts. Because the State LOCAL Program financing documents themselves and the form of legal opinion required to be provided for the local agency are standard forms not subject to negotiation, we do not believe that our representation of the State as certificate counsel has any adverse effect upon the City and may be waived. This is particularly true because all of the credit analysis of the local agency is performed by the Office of State Treasurer. The representation of the State and City is not prohibited by law. The representation does not involve the assertion of claims by one client against another client in a proceeding in which the lawyer representing both clients. We have obtained a written waiver from the State for any conflicts that may arise from our representation of issuers who participate in the LOCAL program. In view of the foregoing, we have considered the conflicts presented here (even though there may not be a technical conflict of interest), and we believe that it is appropriate to ask the City to waive the conflicts. If you have any questions, however, we would encourage you to seek legal advice from the City Attorney.



Execution of this letter will confirm that the City has consented to our representation of the State consistent with the circumstances described in the foregoing paragraphs, and that the City has waived the conflicts of interest identified herein.

*Regarding Other Foster Pepper Clients.* Foster represents many political subdivisions, companies and individuals. It is possible that during the time that we are representing the City, one or more of our present or future clients will have transactions with City. It is also possible that we may be asked to represent, in an unrelated matter, one or more of those types of clients. For example, from time to time we serve as counsel to bond underwriters, or we represent neighboring governments, or we assist developers in land use or environmental matters. We do not foresee, however, that any such prior or future representation will adversely affect our ability to represent you as provided in this letter, either because such matters were or will be sufficiently different from the issuance of the Financing Contract so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the Financing Contract. Execution of this letter will signify City's consent to our representation of others consistent with the circumstances described in this paragraph. To the extent we believe such future representation may adversely affect our representation of the City, we will disclose such representation to the City and, if required by ethical rules, seek the appropriate City consent. However, the City's consent to our representation of other clients as described in this paragraph does not extend to Foster lawyers representing a client in any litigation or similar dispute adverse to the City before any court or similar forum. A separate waiver would need to be sought, based on the facts of the relevant dispute.

### **FEEES**

Based upon our current understanding of the structure of the LOCAL financing program and the responsibilities we will assume in connection with delivering the Opinion, our fee (including out-of-pocket costs) will be \$1,200. Our fee may increase if unusual or unforeseen circumstances arise. We will advise you if we believe that circumstances warrant an adjustment to our fee. Our invoice will be presented following Closing.

### **RECORDS RETENTION**

We maintain policies regarding retention and destruction of records. Records include our files and related electronic documentation, including e-mails. Records (including materials provided by you to us and all electronic documentation) relating to this engagement will be destroyed according to the policies unless you request that they be returned to you. We normally retain client files for ten years after a matter is closed. If you wish records to be returned to you when your matter is closed, you must inform the responsible attorney in writing of your request. We will endeavor to remind you of this policy on completion of the engagement, but we retain the right to destroy records in accordance with our policy without further notice to you.

### **TERMINATION**

You may terminate our representation of you at any time and for any reason with notice. In addition, we may choose to withdraw from the representation, but only in accordance with the

August 21, 2017

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applicable Rules of Professional Conduct in effect in the jurisdiction where our relationship exists. If we choose to withdraw as your lawyers, we will notify you in writing. At termination or withdrawal, you will remain obligated to pay us promptly for all charges for legal services rendered as well as charges resulting from the termination or withdrawal, including working with any successor counsel. We will cooperate with successor counsel to assure a smooth transfer of the representation. In the event of termination or withdrawal, we reserve the right to make withdrawals against any advance fee payment or retainer we may hold.

### RECORDS

Upon request, papers and property furnished by you will be returned promptly. Our own files, including lawyer work product, pertaining to the transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other materials retained by us after the termination of this engagement.

If the foregoing terms are acceptable, please execute two copies of this letter and return one copy to me. Please retain one executed copy for the City's files. We look forward to working with you. Thank you.

FOSTER PEPPER PLLC



Jeffrey C. Nave

The terms of engagement set forth herein are accepted and approved this \_\_\_\_ day of August, 2017.

CITY OF DAYTON, WASHINGTON

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Craig George, Mayor



## City of Dayton Hotel/Motel Lodging Excise Tax Funding Information, Guidelines, and Application (Chapter 67.28 RCW)

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The City of Dayton Hotel/Motel Lodging Excise Tax Funding Application is available year around, but is due no later than October 15 of each year, at [www.daytonwa.com](http://www.daytonwa.com) or by contacting City of Dayton.

### ***What is the Hotel/Motel Lodging Excise Tax Fund?***

Funding for this program comes from the Motel/Hotel Lodging Excise Tax Fund (Lodging Tax) which receives hotel/motel taxes from lodging establishments inside the city limits. The City collects a four percent special excise tax on charges for overnight lodging (RCW 67.28.181).

### ***Which State Law Governs the Use of Lodging Tax Funds?***

Revised Code of Washington (RCW), Chapter 67.28 'Public Stadium, Convention, Arts and Tourism Facilities' provides detailed information about the use, award and reporting of tourism funds.

### **Important Terms Relating to RCW 67.28:**

**Tourism:** Economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

**Tourism promotion:** Activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

**Tourism-related facility:** Real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.

### ***What Can Be Funded with Lodging Tax Revenue?***

Lodging taxes can be used for:

- tourism marketing,
- marketing and operations of special events and festivals,
- operations of tourism-related facilities owned or operated by nonprofit organizations,
- operations and capital expenditures of tourism related facilities owned by the City of Dayton.

### ***Who May Apply?***

The annual funding program is open to non-profit organizations with the demonstrated ability to achieve tourism goals as outlined below:

- Increase hotel occupancy in Dayton by creating overnight stays.
- Increase overnight stays during the off season.
- Provide visitor attractions and/or promote the area's existing attractions.
- Attract more businesses to Dayton and thereby generate additional business for hotels and motels.

As a result of State Legislative changes made in the 2013 session, all applications must include estimates of how funding the activity will result in increases to people staying overnight, travelling 50 miles or more, or coming from another state or country. To ensure this data is collected, the City is now required to have applicants provide additional information in the lodging tax application.

### ***What is the Selection and Award Process?***

Funding of a program/activity and specific awards are dependent on the Dayton City Council's final determination. Hotel/Motel Lodging Excise Tax Funds will be awarded on a competitive basis, and applicants will be notified following City Council decision.

The City Council will make awards based on the most competitive applications that meet the criteria for funding outlined in the previous paragraph.

### ***What are the application requirements?***

All organizations seeking funding under this program must submit a completed application form along with all required documentation in order to be considered for funding. Incomplete applications will not be considered by the Dayton City Council.

Applications must be received at Dayton City Hall, 111 S. 1<sup>st</sup> Street, Dayton, WA 99328 by 3:45 p.m. October 15. Please submit one (1) fully completed, signed original AND four (4) copies. All applications must be able to be clearly reproduced in black and white. Applications submitted by fax or email will **not** be accepted.

Dayton City Hall mailing address: Trina Cole, City Clerk-Treasurer  
City of Dayton  
111 S. 1st Street  
Dayton, WA 99328

For more information contact Trina Cole at 509.382.2361 or by email at [trina@daytonwa.com](mailto:trina@daytonwa.com).

Organizations awarded funds *will be required to execute a contractual agreement* that will set out the performance expectations, level of funding, mechanism for invoicing for payment and reporting requirements.

### ***What will be my entity's reporting requirements?***

Reporting requirements enacted by the Washington State legislature in 2013 requires the City to report to the State regarding the use of funds for the year. All recipients of lodging tax revenue, regardless of what the revenue is to be used for, must submit a post-event activity report to the City describing the actual number of travelers generated. The City *will*, as part of the contract with the recipients, *require* that the report be provided immediately after the event or activity. The City will file an annual report to the State of Washington Joint Legislative Audit and Review Committee (JLARC) base on the information provided by the event coordinator.

The post-event activity report ***must*** include the following:

- ☐ Total amount spent on the event.

- ☐ The number of participants who attended the event/activity in each of the following categories:
  - Stayed overnight in paid accommodations away from their place of residence or business;
  - Stayed overnight in unpaid accommodations (e.g. with friends and family) and traveling fifty miles or more one way from their place of residence or business;
  - Stayed for the day only and traveling more than fifty miles or more one way from their place of residence or business;
  - Attended but not included in one of the three categories above.
- ☐ The estimated number of participants in any of the above categories that attended from out-of-state (includes other countries).
- ☐ A description of methods used to determine attendance and distinguish among the visitor categories at the event/activity.

**Any recipient awarded funding must complete the reporting requirements.**

**CITY OF DAYTON  
APPLICATION FOR  
LODGING TAX FUNDS**

**ORGANIZATION/AGENCY INFORMATION**

Organization/Agency _____			Federal Tax ID Number _____		
Contact Name _____			Title _____		
Mailing Address _____			City _____	State _____	Zip _____
Work Phone _____	Cell Phone _____	Fax _____	Email Address _____		

☐ **Tourism Promotion Activities**

☐ **Tourism-Related Facility**

☐ **Events/Festivals:** \_\_\_\_\_  
Name of Event/Festival Location Date

☐ **Non-profit** (Attach copy of current non-profit corporate registration with Washington Secretary of State)

☐ **Public Agency**

**Amount Requested: \$** \_\_\_\_\_

**CERTIFICATION**

I hereby state on behalf of \_\_\_\_\_ that:  
Organization/Agency Name

Tourism Promotion Activities or Tourism-Related Facilities:

☐ This is an application for a contract with the City of Dayton and, if awarded, my organization/agency intends to enter into a Municipal Services Contract with the City of Dayton.

Events/Festivals:

☐ The applicant has, or can obtain, general liability insurance in an amount commensurate with the exposure of the event/festival.

☐ I understand the City of Dayton will only reimburse those costs actually incurred by my organization/agency and only after the service is rendered, paid for if provided by a third party, and a signed Request for Reimbursement form has been submitted to the City, including copies of invoices and payment documentation.

\_\_\_\_\_  
SIGNATURE (Please sign after printing)

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
DATE

## SUPPLEMENTAL QUESTIONS

### DESCRIPTION OF TOURISM-RELATED ACTIVITIES OR EVENT:

**1. PROVIDE ESTIMATE OF HOW ANY HOTEL/MOTEL LODGING TAX FUNDS RECEIVED WILL RESULT IN INCREASES IN THE NUMBER OF PEOPLE TRAVELING FOR BUSINESS OR PLEASURE ON A TRIP:**

- Away from their place of residence or business and staying overnight in paid accommodations: \_\_\_\_\_
- To a place fifty miles or more one way from their place of residence or business for the day or staying overnight: \_\_\_\_\_
- From another country or state outside of their place of residence or their business: \_\_\_\_\_

**2. HOW DO SERVICES PROMOTE AND ENHANCE TOURISM FOR DAYTON:**

- Describe the tourism promotion impact on the economy of the City of Dayton, specifically lodging, food service sectors, and community facilities.
- Provide copies of proposed promotional material.

**3. DESCRIBE HOW YOU WILL ENCOURAGE SUPPORT OF DAYTON BUSINESSES, RESTAURANTS, AND RETAIL:**

4. IDENTIFY IF THERE IS A HOST HOTEL FOR THE EVENT: \_\_\_\_\_

5. WHAT IS TARGET AGE GROUP(S): \_\_\_\_\_

6. DESCRIBE COMMUNITY APPEAL AND/ OR SUPPORT:

7. DO YOU RELY SOLELY ON HOTEL/MOTEL TAX FUNDS FROM THE CITY OF DAYTON: YES \_\_\_\_\_ NO \_\_\_\_\_

- If yes, provide an itemized list identifying each type of expenditure to be reimbursed.

8. DO YOU SEEK MULTIPLE SOURCES OF SUPPORT: YES \_\_\_\_\_ NO \_\_\_\_\_

IF YES, LIST THE SOURCE AND AMOUNTS:

1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____

9. DO YOU PLAN TO BECOME SELF-FUNDED: YES\_\_\_ NO \_\_\_\_\_

10. HAVE YOU RECEIVED CITY FUNDS IN THE PAST: YES\_\_\_ NO \_\_\_\_\_

11. IS THIS APPLICATION FOR NEW FUNDS: YES\_\_\_ NO \_\_\_\_\_

12. IF YOU ANSWERED YES TO INCREASED FUNDS, DESCRIBE THE REASON FOR THE INCREASE:

13. EVENT LOCATION: \_\_\_\_\_ DAYTON \_\_\_\_\_ OTHER \_\_\_\_\_

14. DATE(S) OF EVENT: \_\_\_\_\_

15. SINGLE OR MULTI-DAY EVENT: \_\_\_\_\_

16. PROJECTED ATTENDANCE: \_\_\_\_\_



## SUBMITTAL INSTRUCTIONS

**APPLICATION DEADLINE:** OCTOBER 15 of each year

**SUBMIT ORIGINAL AND FOUR (4) COPIES TO:** CITY OF DAYTON  
Trina Cole, City Clerk-  
Treasurer 111 S. 1<sup>st</sup> Street  
Dayton, WA 99328

**REQUIRED DOCUMENTS:**

1. Completed and signed application.
2. Completed supplemental questions 1-16.
3. A copy of your agency's current non-profit corporate registration with the Washington Secretary of State. A copy of the online record is sufficient.
4. An itemized budget in the amount you are requesting from the City. As an example, if you are requesting \$5,000 in Hotel/Motel Lodging Tax funds from the City, provide detail about what the \$5,000 will pay for.

**ORDINANCE NO. 1919**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAYTON,  
WASHINGTON, AUTHORIZATION FOR THE ACQUISITION OF PERSONAL  
PROPERTY AND EXECUTION OF A FINANCING CONTRACT AND RELATED  
DOCUMENTATION RELATING TO THE ACQUISITION OF SAID PERSONAL  
PROPERTY.**

**WHEREAS**, the City of Dayton (the “Local Agency”) has executed a Notice of Intent to the Office of State Treasurer, in the form of Exhibit A (the “NOI”) to the form of Local Agency Financing Contract attached hereto (the “Local Agency Financing Contract”), in relation to the acquisition of and the financing of the acquisition of the Property, as defined below, under the provisions of CH 39.94 RCW; and

**WHEREAS**, it is deemed necessary and advisable by the Mayor, Public Works Director and City Clerk-Treasurer of the Local Agency that the Local Agency acquire the equipment and/or personal property identified in the NOI (the “Property”); and

**WHEREAS**, it is deemed necessary and advisable by the Mayor, Public Works Director and City Clerk-Treasurer of the Local Agency that the Local Agency enter into the Local Agency Financing Contract with the Office of the State Treasurer in an amount not to exceed \$86,792, plus related financing costs, in order to acquire the Property and finance the acquisition of the Property;

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

**WHEREAS**, the Local Agency desires to appoint the individuals set forth in Exhibit C to the form of Local Agency Financing Contract as the representatives of the Local Agency in connection with the acquisition of the Property and execution of the Local Agency Financing Contract (each an “Authorized Agency Representative”);

**NOW, THEREFORE, BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF DAYTON AS FOLLOWS:**

**Section 1.** The individuals holding the offices or positions set forth in Exhibit C to the form of Local Agency Financing Contract are each hereby appointed as a representative of the Local Agency in connection with the acquisition of the Property and execution of the Local Agency Financing Contract and all other related documents. One (1) Authorized Agency Representative shall be required to execute any one document in order for it to be considered duly executed on behalf of the Local Agency.

**Section 2.** The form of the Local Agency Financing Contract attached hereto is hereby approved and the Authorized Agency Representatives are hereby authorized and directed to execute and

deliver the Local Agency Financing Contract, in an amount not to exceed \$86,792, plus related financing costs, and in substantially the form attached hereto with such changes as may be approved by the Authorized Representative(s), for the acquisition of the Property and financing of the acquisition of the Property.

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

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

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

**PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF DAYTON, WASHINGTON, AT A REGULAR MEETING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.**

City of Dayton

\_\_\_\_\_  
By: Craig George, Mayor

Attested By:

\_\_\_\_\_  
By: Trina Cole, City Clerk-Treasurer

AI No. 6(A)

Approved as to form:  
Foster Pepper PLLC

---

By: Jeff Nave, Bond Attorney

Attachment  
Notice of Intent to the Office of State Treasurer  
Form of Local Agency Financing Contract

ORDINANCE SUMMARY BY TITLE ONLY FOR PUBLICATION PURPOSES  
ORDINANCE NO. 1919

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, AUTHORIZATION FOR THE ACQUISITION OF PERSONAL PROPERTY AND EXECUTION OF A FINANCING CONTRACT AND RELATED DOCUMENTATION RELATING TO THE ACQUISITION OF SAID PERSONAL PROPERTY.

The full text of Ordinance 1919 adopted the 28<sup>th</sup> day of August, 2017 is available for examination at the City Clerk's Office, 111 S. 1st St., Dayton, WA during normal business hours, Monday – Thursday, 8:00 a.m. to 4:00 p.m. Full text of the Ordinance shall be mailed upon request.

By: /s/ Craig George, Mayor

Attest: /s/ Trina Cole, City Clerk-Treasurer

Approved as to form: /s/ Quinn Plant, City Attorney

Published:

Dayton Chronicle

08/31/2017

Transaction No. \_\_\_\_\_

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LOCAL AGENCY FINANCING CONTRACT, SERIES #1#  
(Personal Property)

by and between the

STATE OF WASHINGTON

and

City of Dayton,  
a municipal corporation of the State of Washing  
("Local Agency")

Relating to  
\$86,792  
State of Washington  
Certificates of Participation, Series 2017B

Dated as of \_\_\_\_\_, 20\_\_

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Exhibit B – Personal Property Certificate

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Exhibit D – Schedule of Agency Installment Payments



**LOCAL AGENCY FINANCING CONTRACT, SERIES #1#**  
**(Personal Property)**

This Local Agency Financing Contract, Series 2017B (the “Local Agency Financing Contract”), is entered into by and between the state of Washington (the “State”), acting by and through the State Treasurer (the “State Treasurer”), and **City of Dayton**, a **municipal corporaton** of the State (the “Local Agency”).

**RECITALS**

The Parties are entering into this Local Agency Financing Contract based upon the following facts and expectations:

1. Chapter 39.94 RCW (the “Act”) authorizes the State to enter into financing contracts for itself, including for state agencies, departments or instrumentalities, the state board for community and technical colleges, and any state institution of higher education (defined in Appendix 1 as “State Agencies”), for the use and purchase of real and personal property by the State; and

2. the Act also authorizes the State to enter into financing contracts on behalf of certain “other agencies” (defined in Appendix 1 as “Local Agencies”), including the Local Agency, for the use and acquisition for public purposes of real and personal property by such Local Agencies; and

3. the Act authorizes the State Finance Committee to consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more State Agencies or Local Agencies (together, “Agencies”); and

4. Chapter 43.33 RCW provides that the State Treasurer shall act as chair of the State Finance Committee and provide administrative assistance for the State Finance Committee, and the State Treasurer on behalf of the State Finance Committee has established a consolidated program for the execution and delivery of certificates of participation in master financing contracts in series from time to time in order to provide financing or refinancing for the costs of acquisition of such real and personal property by Agencies; and

5. The State Finance Committee has approved the form of this Local Agency Financing Contract by Resolution No. \_\_\_\_ adopted on \_\_\_\_\_, 20\_\_; and

6. Simultaneously with the execution and delivery of this Local Agency Financing Contract, the State is entering into a Master Financing Contract, Series 2017B , dated as of the Dated Date (the “Master Financing Contract”) with the Washington Finance Officers Association (the “Corporation”), a Washington nonprofit corporation, to provide financing for the costs of acquisition of certain items of personal property by certain State Agencies and Local Agencies, including the Local Agency, under the terms set forth therein; and

7. The Local Agency has determined that it is necessary and desirable to enter into this Local Agency Financing Contract, in conjunction with the State’s entry into the Master

Financing Contract, to obtain financing or refinancing for the costs of acquisition of certain items of personal property described in Exhibit B (the "Property"), by the Local Agency;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other valuable consideration, the Parties hereto mutually agree as follows:

## ARTICLE I

### DEFINITIONS; CONSTRUCTION; MISCELLANEOUS PROVISIONS; SUPPLEMENTS

Section 1.1 Definitions, Construction, Miscellaneous Provisions, Supplements. Appendix 1 is incorporated as part of this Local Agency Financing Contract by this reference. Appendix 1 provides (i) definitions for the capitalized terms used and not otherwise defined in this Local Agency Financing Contract; (ii) certain rules for interpreting this Local Agency Financing Contract; (iii) miscellaneous technical provisions that apply to this Local Agency Financing Contract; and (iv) rules on how this Local Agency Financing Contract may be amended or supplemented.

Section 1.2 Notice of Intent, Personal Property Certificate and Certificate Designating Authorized Local Agency Representative. Exhibits A, B, C and D to this Local Agency Financing Contract are incorporated as part of this Local Agency Financing Contract by this reference. The Local Agency has delivered a Notice of Intent to the State Treasurer in the form of Exhibit A. In order to evidence its acceptance of the Property financed and acquired pursuant hereto, the Local Agency has executed and delivered, or will execute and deliver within 60 days from the Dated Date to the State Treasurer, a Personal Property Certificate in the form of Exhibit B. The Local Agency has delivered a Certificate Designating Authorized Agency Representatives to the State Treasurer in the form of Exhibit C. That Certificate is currently in force and has not been amended, withdrawn or superseded, and the signatures shown thereon are true and correct originals of the signatures of the persons who hold the titles shown opposite their names. The signature of any one of the individuals shown on that Certificate is sufficient to bind the Local Agency under this Local Agency Financing Contract with respect to any of the undertakings contemplated herein.

Section 1.3 Performance by Representatives. Any authority granted or duty imposed upon the State hereunder may be undertaken and performed by the State Treasurer or the Treasurer Representative. Any authority or duty imposed upon the Local Agency hereunder may be undertaken and performed by the Authorized Agency Representative.

Section 1.4 Installment Sale and Purchase of Property. The State agrees to sell to the Local Agency, and the Local Agency agrees to purchase from the State, all of the State's right, title and interest in and to the Property and all proceeds and profits from the Property, subject to the security interest granted pursuant to Section 2.4.

Section 1.5 Agency Installment Payments. In consideration of the sale of the Property and the covenants and agreements of the State in this Local Agency Financing Contract, the Local Agency promises to pay to the State the following amounts at the following times: (a) On each Agency Installment Payment Date, the Agency Installment Payment set forth in Exhibit D, consisting of an Agency Principal Component and/or an Agency Interest Component as set forth

in Exhibit D; and (b) all Additional Costs incurred by the State in connection with the sale of the Property to the Local Agency, the execution and delivery of the Certificates, and the observance and performance of the Series #1# Agreements, within 30 days following receipt of an invoice from the State that includes (i) a brief description of each Additional Cost, (ii) the party to whom payment is due, (iii) the amount thereof, and (iv) such additional information as the Local Agency may reasonably request.

Section 1.6 Term. The term of this Local Agency Financing Contract shall commence on the Dated Date and shall terminate on the date on which all amounts due hereunder shall have been paid or the payment thereof duly provided for pursuant to Section 4.3 hereof.

## ARTICLE II SALE AND PURCHASE OF PROPERTY

Section 2.1 Local Agency Financing Contract Consolidated with Master Financing Contract. The Local Agency acknowledges that the State Treasurer, acting on behalf of the State Finance Committee, has consolidated this Local Agency Financing Contract with the Master Financing Contract pursuant to RCW 39.94.030(1)(a).

Section 2.2 Appointment as Agent; Acquisition of Property; Revision and Substitution of Property.

(a) *Appointment as Agent*. The Local Agency accepts its appointment in the Master Financing Contract as agent of the Corporation in connection with the acquisition of the Property, and acknowledges that such appointment is irrevocable and shall not be terminated by any act of the Local Agency, the State Treasurer or otherwise.

(b) *Acquisition of Property*. The Local Agency agrees that (i) it has caused or will cause the Property to be acquired, as agent for the Corporation, with all reasonable dispatch; (ii) it will negotiate or call for bids for the purchase of the Property in accordance with the requirements and limitations, if any, imposed by State or local law with respect to the purchase of such Property by such Local Agency; (iii) it will make, execute, acknowledge and deliver any contracts, agreements, orders, receipts, documents, writings or instructions with or to any Person and do all other things that may be necessary or desirable to acquire the Property; and (iv) it will pay or cause to be paid the Costs of Acquisition of the Property from funds available to it pursuant to this Local Agency Financing Contract and the Master Financing Contract. The Local Agency shall file requisitions with the State Treasurer for the Acquisition Costs of the Property or reimbursement therefor in such form as the State Treasurer shall reasonably require. Neither the Corporation nor the State shall have any responsibility, liability or obligation with respect to the selection or procurement of any of the Property.

(c) *Revision and Substitution of Property*. The Local Agency, with the prior written consent of the State Treasurer, may revise any item of Property to be financed or refinanced and acquired pursuant hereto, or the description thereof; *provided*, that (i) such item of Property as so revised shall satisfy the requirements under this Local Agency Financing Contract and the Master Financing Contract with respect to the substitution of Property previously acquired; (ii) the Costs of Acquisition of such item of Property shall not be materially reduced thereby; and

(iii) any such revision shall not relieve the Local Agency of its obligation to acquire the Property in accordance herewith and with the Master Financing Contract.

After acquisition of an item of Property, the Local Agency, with the prior written consent of the State Treasurer as agent for the Corporation, may substitute for an item of Property acquired pursuant to this Local Agency Financing Contract other personal property by filing with the State Treasurer a certificate of the Local Agency stating that such substitute Property (i) has a remaining useful life equal to or greater than the Property for which it is being substituted; (ii) has a fair market value equal to or greater than the fair market value of the item of Property for which it is being substituted; (iii) is free and clear of all liens and encumbrances except a first priority security interest in favor of the Corporation under the Master Financing Contract; (iv) is essential to the Local Agency's ability to carry out its governmental functions and responsibilities; and (v) is expected to be used by such Local Agency for the term of this Local Agency Financing Contract. The State Treasurer's consent to any such substitution as agent for the Corporation will be conditioned upon receipt by the State Treasurer of an Opinion of Counsel to the effect that such substitution will not cause interest evidenced and represented by the Certificates to be includable in gross income for federal income tax purposes under the Code. The State Treasurer also may require the Local Agency to reimburse the State Treasurer for all costs incurred, if any, to obtain such Opinion of Counsel.

(d) *Payment for Property if Acquisition Fund Not Sufficient.* If money in the Acquisition Fund allocable to the Local Agency is not sufficient to pay the Acquisition Costs of the Property in full, the Local Agency shall cause the Acquisition Costs of such Property in excess of the allocable amount in the Acquisition Fund to be paid from other money of such Local Agency. Neither the Corporation nor the State Treasurer as agent for the Corporation for the disbursement of funds from the Acquisition Fund makes any representation or warranty, either express or implied, that the money which will be deposited into the Acquisition Fund allocable to the Local Agency will be sufficient to pay the Acquisition Costs of the Property. Neither the Corporation nor the State Treasurer as agent for the Corporation for the disbursement of funds from the Acquisition Fund shall have any obligation or liability for the payment of the Acquisition Costs of the Property other than from the proceeds of the Certificates and any other amounts that may be provided by the Local Agency. If the Local Agency shall pay or cause the payment of any Acquisition Costs in excess of the allocable amounts in the Acquisition Fund available for such purpose from other funds, the Local Agency shall not be entitled to any reimbursement from the Corporation or the State Treasurer as agent for the Corporation for the disbursement of funds from the Acquisition Fund for such payments, nor shall the Local Agency be entitled to any diminution, reduction, abatement, postponement, counterclaim, defense or set-off of the Agency Installment Payments, Additional Costs or other amounts otherwise required to be paid hereunder.

Section 2.3 Title to the Property. All right, title and interest in and to the Property shall transfer to and be vested in the Local Agency from the State without any further action by the Local Agency or the State immediately upon the acquisition thereof by the Local Agency as agent for the Corporation or reimbursement to the Local Agency for the Acquisition Costs thereof; provided, that the State and the Local Agency shall take such action and execute such documents (including without limitation bills of sale and other title documents) as may be

deemed necessary or desirable by the State or the Local Agency to evidence and confirm such transfer of title pursuant to this Local Agency Financing Contract.

The State assigns to the Local Agency during the term hereof, for so long as no Agency Event of Default, Event of Default or other event permitting termination of this Local Agency Financing Contract has occurred and is continuing hereunder, all representations, warranties and guaranties, if any, express or implied, with respect to the Property from the manufacturers, suppliers and vendors thereof, subject, however, to a reservation by the State and the Corporation of a right to independently enforce such warranties and guaranties.

Title to any and all additions, modifications, improvements, repairs or replacements to the Property shall be vested in the Local Agency, subject to the security interest of the Corporation until payment of all amounts due and owing with respect to such Property under this Local Agency Financing Contract.

Any Property constituting a motor vehicle subject to registration with the State Department of Licensing shall be registered with the Local Agency as the registered and legal owner thereof.

#### Section 2.4    Security Interests.

(a)    *State Security Interest.* In order to secure the payment and performance by the State of its obligations under the Master Financing Contract, the State has granted to the Corporation a lien on and security interest in all right, title and interest of the State, whether now owned or hereafter acquired, in and to the Property and this Local Agency Financing Contract, including without limitation the Agency Installment Payments and all proceeds thereof. The Local Agency agrees to such grant and that its right, title and interest in and to the Property is subject to such first priority lien and security interest.

(b)    *Local Agency Security Interest.* In order to secure the payment and performance by the Local Agency of its obligations under this Local Agency Financing Contract, the Local Agency grants to the Corporation a lien on and security interest in all right, title and interest of the Local Agency, whether now owned or hereafter acquired, in and to the Property. Accordingly, this Local Agency Financing Contract constitutes a security agreement. The Local Agency acknowledges and agrees that each provision of this Local Agency Financing Contract is also a provision of the security agreement.

If required by the Corporation, the Local Agency will execute and deliver to the Trustee such security agreements, financing statements and/or other instruments covering the Property and all accessions thereto.

Section 2.5    Disclaimer of Warranties. The Local Agency acknowledges and agrees that the Property is of a nature, size, design and capacity selected by the Local Agency pursuant to its own specifications, and not by the State or the Corporation, and that neither the State nor the Corporation is a manufacturer, supplier or a vendor of such Property.

The Corporation makes no warranty or representation, either express or implied, and assumes no responsibility, liability or obligation, as to the value, design, condition,

merchantability or fitness for a particular purpose or fitness for use of the Property, or as to the title thereto, or for the enforcement of the manufacturers', suppliers' or vendors' representations or warranties or guaranties, or any other representation or warranty with respect to the Property. In no event shall the Corporation be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Local Agency Financing Contract or the use by the Local Agency of the Property.

ARTICLE III  
AGENCY INSTALLMENT PAYMENTS; CONDITIONAL PAYMENT BY STATE;  
FULL FAITH AND CREDIT OBLIGATION

Section 3.1 Agency Installment Payments. Each Agency Installment Payment shall consist of an Agency Principal Component and/or an Agency Interest Component as set forth in Exhibit D to this Local Agency Financing Contract. Interest shall accrue and be calculated as determined by the State Treasurer, which determination shall be binding and conclusive against the Local Agency absent manifest error. Each Agency Installment Payment shall be paid to or upon the order of the State Treasurer by electronic funds transfer (or by other means acceptable to the State Treasurer) in lawful money of the United States of America at such place as the State Treasurer shall direct in writing not less than 10 Business Days prior to the Agency Installment Payment Date. Payments of Additional Costs shall be made to or upon the order of the State Treasurer. Each Agency Installment Payment shall be applied first to the Agency Interest Component, and then to the Agency Principal Component.

Section 3.2 Sources of Payment of Agency Installment Payments.

(a) *Local Agency Financing Contract.* The Local Agency acknowledges and agrees that the State is acquiring the Property from the Corporation for and on behalf of the Local Agency. Concurrently with the execution hereof, the State shall execute and deliver the Master Financing Contract pursuant to which the State agrees to make Installment Payments for the acquisition of the Property for and on behalf of the Local Agency, at such times and in such amounts as provided therein, which will be sufficient in the aggregate to pay the Purchase Price of the Property to be acquired by the State for and on behalf of the Local Agency, and interest thereon. The Local Agency pledges its full faith and credit to make the Agency Installment Payments that are required to be paid under this Local Agency Financing Contract.

Installment Payments allocable to the Purchase Price of the Local Agency Property and interest thereon shall be payable by the State solely from Agency Installment Payments to be made by the respective Local Agencies, including the Local Agency, except as otherwise provided in Sections 3.2(c) and 3.2(d) of the Master Financing Contract and Sections 3.2(b) and 3.2(c) of this Local Agency Financing Contract.

(b) *Intercept of Local Agency Share of State Revenues.* In the event that the Local Agency fails to make any payment due under this Local Agency Financing Contract, pursuant to RCW 39.94.030(1), the State Treasurer shall withhold an amount sufficient to make such payment from the Local Agency's share of State revenues or other amounts authorized or required by law to be distributed by the State to the Local Agency; but (i) only if the use of any such revenues or amounts to make such payments is otherwise authorized or permitted by State

law, and (ii) only to the extent the Local Agency is otherwise entitled to receive such share of State revenues or other amounts. Such withholding shall continue until all such delinquent payments have been made. Amounts withheld by the State Treasurer pursuant to this Section 3.2(b) shall be applied to make any such payment due under this Local Agency Financing Contract on behalf of the Local Agency, or to reimburse the State for any such payment made pursuant to Section 3.2(c). The Local Agency authorizes, approves and consents to any such withholding.

(c) *Conditional Payment of Local Agency Installment Payments.* Upon the failure of the Local Agency to make any Agency Installment Payment at such time and in such amount as required pursuant to this Local Agency Financing Contract, the State shall, to the extent of legally available appropriated funds and subject to any Executive Order reduction, make such payment into the Agency Installment Payment Fund (established under the Master Financing Contract) on behalf of such Local Agency within 15 Business Days after such Agency Installment Payment Date. The Local Agency shall reimburse the State for such payments made on its behalf immediately thereafter and in any case not later than 10 Business Days after such Agency Installment Payment Date, together with interest thereon at a rate equal to the State Reimbursement Rate. Anything herein to the contrary notwithstanding, failure of the Local Agency to reimburse the State for any such payment shall not constitute an Agency Event of Default, but the State may institute such legal action and pursue such other remedies against the Local Agency as the State deems necessary or desirable, including, but not limited to, actions for specific performance, injunction and/or the recovery of damages.

(d) *Payments by Local Agency Treasurer.* The treasurer of the Local Agency shall establish and/or maintain a special fund in the "bonds payable" category of accounts of the Local Agency for the purposes of paying the Local Agency's Agency Installment Payments and Additional Costs. The treasurer of the Local Agency shall remit each Agency Installment Payment to the State on each Agency Installment Payment Date and any Additional Costs when due hereunder from any legally available funds of the Local Agency.

Section 3.3 No Set-Off. The obligation of the Local Agency to make Agency Installment Payments from the sources set forth herein and to perform its other obligations hereunder shall be absolute and unconditional. The Local Agency shall make Agency Installment Payments as and when the same shall become due without diminution, reduction, postponement, abatement, counterclaim, defense or set-off as a result of any dispute, claim or right of action by, against or among the State, the Corporation, the Trustee, any Agency, and/or any other Person, or for any other reason; *provided*, that nothing in this Section 3.3 shall be construed to release or excuse the State from the observance or performance of its obligations hereunder.

Section 3.4 Assignments by the Corporation. The Local Agency acknowledges and agrees that, concurrently with the execution and delivery of this Local Agency Financing Contract, the Corporation will unconditionally assign to the Trustee pursuant to the Master Assignment, without recourse, (i) all of its rights to receive the Installment Payments under the Master Financing Contract, (ii) all of its remaining right, title and interest in, to and under the Master Financing Contract and this Local Agency Financing Contract, and in and to the Property (including any security interest therein), in consideration for the payment by the Trustee to the

State Treasurer, as agent of the Corporation, of the proceeds of the sale of the Certificates. The State and the Corporation have acknowledged and agreed that such assignment by the Corporation is intended to be a true sale of the Corporation's right, title and interest, and that upon such assignment the Corporation shall cease to have any rights or obligations under the Master Financing Contract or with respect to the Property, and the Trustee shall thereafter have all the rights and obligations of the Corporation under the Master Financing Contract as if the Trustee had been the original party thereto. Except where the context otherwise requires, every reference in the Master Financing Contract and this Local Agency Financing Contract to the Corporation shall be deemed to be a reference to the Trustee in its capacity as assignee of the Corporation.

#### ARTICLE IV OPTIONAL PREPAYMENT OF AGENCY INSTALLMENT PAYMENTS

##### Section 4.1 Optional Prepayment.

(a) The Local Agency may, at its option and upon approval of the State Treasurer, prepay its Agency Installment Payments then unpaid, in whole or in part on any date, by causing to be deposited with the State Treasurer money and/or Government Obligations in an amount sufficient for the State to provide for the payment or defeasance of the portion of its Installment Payments corresponding thereto in accordance with Section 4.1(a) or 4.1(b), respectively, of the Master Financing Contract, and to pay any Additional Costs in connection therewith.

(b) The Local Agency shall provide the State Treasurer with not less than 60 days' prior written notice of its intention to prepay any of its Agency Installment Payments, which notice shall specify the date of the date of such prepayment, and the amount and the Agency Installment Payment Dates of the Agency Installment Payments to be prepaid. The State Treasurer shall notify the Local Agency within 15 Business Days after receipt of such notice from the Local Agency as to the amount required to be paid in connection with such prepayment or provision for payment of the corresponding Installment Payments, including any Additional Costs in connection therewith. The determination by the State Treasurer of the amount to be paid by the Local Agency shall be binding and conclusive against such Local Agency, absent manifest error.

Section 4.2 Revision of Agency Installment Payments upon Optional Prepayment. The Agency Principal Component and Agency Interest Component of the Agency Installment Payment due on each Agency Installment Payment Date on and after the date of any prepayment pursuant to Section 4.1, as set forth in Exhibit D, shall be reduced by the State Treasurer to reflect such prepayment, in such amounts and on such Agency Installment Payment Dates as the Local Agency shall elect in its written notice to the State Treasurer, pursuant to Section 4.1(b).

Section 4.3 Discharge of Local Agency Financing Contract. All right, title and interest of the State and all obligations of the Local Agency under this Local Agency Financing Contract shall terminate and be completely discharged and satisfied (except for the right of the State and the Corporation and the obligation of the Local Agency to have the money and



Government Obligations set aside applied pursuant to Section 4.3(b) to make the remaining Agency Installment Payments) when either:

(a) all Agency Installment Payments and all Additional Costs and other amounts due hereunder have been paid in accordance herewith; or

(b) (i) the Local Agency shall have delivered a written notice to the State Treasurer of its intention to prepay all of the Agency Installment Payments remaining unpaid; (ii) the Local Agency shall have caused to be deposited with the State Treasurer (A) money and/or Government Obligations in accordance with Section 4.1; and (B) an Opinion of Counsel to the effect that such actions are permitted under this Local Agency Financing Contract, the Master Financing Contract and the Trust Agreement and will not cause interest evidenced and represented by the Certificates to be includable in gross income for federal income tax purposes under the Code; and (iii) for so long as any Agency Installment Payments remain unpaid, provision shall have been made satisfactory to the Corporation for payment of all Additional Costs.

## ARTICLE V REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

Section 5.1 Representations and Warranties of the Local Agency. The Local Agency represents and warrants as follows:

(a) The Local Agency is an “other agency” within the meaning of the Act, duly organized and validly existing under the Constitution and laws of the State.

(b) The Local Agency is authorized under the laws of the State and its charter or other constituent document, if any, to enter into and perform its obligations under this Local Agency Financing Contract.

(c) Neither the execution and delivery by the Local Agency of this Local Agency Financing Contract, nor the observance and performance of its terms and conditions, nor the consummation of the transactions contemplated by it, conflicts with or constitutes a breach of or default under any agreement or instrument to which the Local Agency is a party or by which the Local Agency or its property is bound, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon the Property, except as expressly provided in this Local Agency Financing Contract and the Master Financing Contract.

(d) The Local Agency has duly authorized, executed and delivered this Local Agency Financing Contract.

(e) This Local Agency Financing Contract constitutes valid and binding general obligation indebtedness of the Local Agency, enforceable against it in accordance with its terms, except as such enforceability may be affected by bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors’ rights generally, to the application of equitable principles, and to the exercise of judicial discretion in appropriate cases.

(f) The Property to be financed and acquired pursuant to this Local Agency Financing Contract is essential to the Local Agency's ability to carry out its governmental functions and responsibilities, and the Local Agency expects to make immediate and continuing use of the Property during the term of this Local Agency Financing Contract.

(g) The useful life of the Property is equal to or exceeds the term of this Local Agency Financing Contract.

(h) The obligations of the Local Agency under this Local Agency Financing Contract, together with all other outstanding indebtedness of the Local Agency, do not exceed any statutory or constitutional debt limit applicable to the Local Agency.

(i) The Local Agency makes no representation or warranty regarding the perfection of any security interest in the Property, the Master Financing Contract or this Local Agency Financing Contract for the benefit of the Corporation.

Section 5.2 Covenants and Agreements of the Local Agency. The Local Agency covenants and agrees as follows:

(a) *Preservation of Existence.* The Local Agency will do or cause to be done all things necessary to preserve its existence as an "other agency" within the meaning of the Act.

(b) *Budget.* The Local Agency shall take such action as may be necessary to include all the Agency Installment Payments and Additional Costs due hereunder in its annual budget and to make the necessary annual appropriations for all such Agency Installment Payments and Additional Costs.

(c) *Levy of Taxes.* If and to the extent authorized by law, the Local Agency covenants that it will levy taxes in such amounts and at such times as shall be necessary, within and as a part of the tax levy, if any, permitted to be made by the Local Agency without a vote of its electors, to provide funds, together with other legally available money, sufficient to make the Agency Installment Payments and the other payments required under this Local Agency Financing Contract.

(d) *Notice of Nonpayment.* The Local Agency shall give written notice to the State Treasurer and the Corporation prior to any Agency Installment Payment Date if the Local Agency knows prior to such date that it will be unable to make all or any portion of the Agency Installment Payment due on such date.

(e) *Tax Exemption.* The Local Agency shall not make any use of the proceeds of this Local Agency Financing Contract or the Certificates or of any other amounts, regardless of the source, or of any property, and shall not take or refrain from taking any action, that would cause the Master Financing Contract or the Certificates to be "arbitrage bonds" within the meaning of Section 148 of the Code. The Local Agency shall not use or permit the use of the Property or any part thereof by any Person other than a "governmental unit" as that term is defined in Section 141 of the Code, in such manner or to such extent as would result in the loss of the exclusion from gross income for federal income tax purposes of the Interest Component of the Installment Payments under Section 103 of the Code. The Local Agency shall not make any use

of the proceeds of this Local Agency Financing Contract or the Certificates or of any other amounts, and shall not take or refrain from taking any action, that would cause the Master Financing Contract or the Certificates to be “federally guaranteed” within the meaning of Section 149(b) of the Code, or “private activity bonds” within the meaning of Section 141 of the Code, or “hedge bonds” within the meaning of Section 149 of the Code. To that end, for so long as any Agency Installment Payments remain unpaid, the Local Agency, with respect to such proceeds and other amounts, will comply with all requirements under such Sections and all applicable regulations of the United States Department of the Treasury promulgated thereunder. The Local Agency will at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the Interest Components of the Installment Payments will not be included in gross income of the Owners of the Certificates for federal income tax purposes under the Code, and will take no action that would result in such interest being so included. The Local Agency shall comply with the applicable provisions of the Tax Certificate.

(f) *No Liens; Sale or Disposal; or Assignment.* The Local Agency shall not create, incur or assume any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, except the rights of the Corporation as provided herein and in the Master Financing Contract. The Local Agency shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Local Agency shall not grant, sell, transfer, assign, pledge, convey or otherwise dispose of any of the Property or any interest therein during the term of this Local Agency Financing Contract, and any such attempted grant, sale, transfer, assignment, pledge, conveyance or disposal shall be void. The Local Agency may not grant, sell, assign, transfer, convey, pledge, hypothecate or grant any security interest in any of its right, title or interest in, to or under this Local Agency Financing Contract. Any attempted grant, sale, assignment, conveyance, pledge, hypothecation or security interest shall be void.

(g) *Performance.* The Local Agency shall punctually pay the Agency Installment Payments and any Additional Costs in conformity with the terms and provisions hereof, and will faithfully observe and perform all the covenants, terms and other obligations contained herein required to be observed and performed by the Local Agency. The Local Agency will not suffer or permit any default to occur hereunder, or do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted, or any such omission or refraining from doing anything, would or might be grounds for termination of this Local Agency Financing Contract. The Local Agency will not terminate this Local Agency Financing Contract for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Property, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of the State, or any failure by the State or the Corporation to observe or perform any covenant, agreement, term, condition or other obligation contained herein or in the Master Financing Contract required to be observed and performed by it, whether express or implied, or the bankruptcy, insolvency, liquidation or reorganization of the Corporation.

(h) *Further Assurances.* The Local Agency will preserve and protect the rights of the State hereunder, and will warrant and defend such rights against all claims and demands of all Persons. The Local Agency will promptly execute, make, deliver, file and record any and all

further assurances, instruments and agreements, and do or cause to be done such other and further things, as may be necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming to the State the rights and benefits provided to it hereunder.

(i) *Use of Property.* During the term of this Local Agency Financing Contract, the Local Agency will use the Property for the purposes of performing one or more of its essential governmental functions or responsibilities. The Local Agency will not permit the Property to be used or operated other than by authorized employees, agents and contractors of the Local Agency.

(j) *Financial Statements.* The Local Agency shall prepare annual financial statements and obtain audits thereof as required by law. Upon the Written Request of the State Treasurer, the Local Agency shall provide the State Treasurer with a copy of its most recent audited and unaudited financial statements.

(k) *Use; Repairs.* For so long as the Local Agency is in possession of the Property, the Local Agency shall be solely responsible for the maintenance and repair, both ordinary and extraordinary, of the Property. The Local Agency will (i) keep and maintain the Property in good repair, working order and condition, and protect the same from deterioration other than normal wear and tear; (ii) cause the Property to be used within its normal capacity, in the manner contemplated by the manufacturer's specification, and in compliance with the requirements of applicable laws, ordinances and regulations, the requirements of any warranties applicable thereto, and the requirements of any insurance or self-insurance program required under Section 5.2(p); (iii) cause the Property to be used and operated by or under the direction of competent persons only, and obtain all registrations, permits and licenses, if any, required by law for the operation of the Property; and (iv) will pay all costs, claims, damages, fees and charges arising out of its possession, use or maintenance of the Property. The Local Agency, at its expense, will furnish all parts, mechanisms and devices required to operate and maintain the Property.

(l) *Alterations.* The Local Agency will not make any alterations, additions or improvements to the Property without the prior written consent of the State Treasurer unless such alterations, additions or improvements (i) maintain or increase the value of the Property; or (ii) may be readily removed without damage to the Property. All such alterations, additions or improvements shall be deemed to be a part of the Property and shall be subject to the terms and provisions of this Local Agency Financing Contract.

(m) *Location; Inspection.* The Property will be located within the State. The Corporation will be entitled to inspect the Property during regular business hours upon at least one Business Day's prior notice. The Local Agency acknowledges, and consents and agrees to, the right of the Corporation to so inspect the Property.

(n) *Impositions and Charges.* If during the term of this Local Agency Financing Contract, any Imposition is imposed or incurred in connection with the sale and purchase of the Property by the Corporation to the State, or by the State to the Local Agency, or the ownership, operation, possession or use of the Property by the Corporation, the State or the Local Agency,

or the payment of the Agency Installment Payments by the Local Agency, or the payment of the Installment Payments payable therefrom by the State, or any fines, penalties or interest imposed on or with respect to any of the foregoing, the Local Agency shall pay all such Impositions and charges when due. The Local Agency at its own expense may contest any such Impositions and charges until it obtains a final administrative or judicial determination with respect thereto, unless the Property is encumbered by any levy, lien or any other type of encumbrance because of the Local Agency's failure to pay such Impositions or charges. If the State or the Corporation pays any such Impositions or charges for which the Local Agency is responsible or liable hereunder, the Local Agency shall reimburse the State or the Corporation, as applicable, therefor as Additional Costs hereunder. The Local Agency shall hold harmless the State and the Corporation from and against all such Impositions and charges during the term of this Local Agency Financing Contract.

(o) *Risk of Loss; Damage; Destruction; Condemnation.* The Local Agency assumes all risk of loss of or damage to the Property from any cause whatsoever, and the obligation of the Local Agency to pay the Agency Installment Payments or to perform any other obligation under this Local Agency Financing Contract shall in no way be released, discharged or otherwise affected for any reason, including without limitation (i) any defect in the condition, quality or fitness for use of, or title to, any portion of the Property, or (ii) any damage to, or abandonment, destruction, requisition, condemnation or taking of any portion of the Property. In the event of damage to any item of the Property, the Local Agency will immediately place the same in good repair, working order and condition as required by Section 5.2(k) hereof. If the Local Agency determines that any item of Property is lost, stolen, destroyed or damaged beyond repair, the Local Agency will prepay all of its obligations for Agency Installment Payments and terminate its obligations hereunder in accordance with Section 4.3(b) hereof.

(p) *Insurance.*

(i) The Local Agency shall maintain, or cause to be maintained, in full force and effect, comprehensive general liability insurance with respect to the Property in such amounts as may be reasonably determined by the Local Agency from time to time but in any event not less than \$1,000,000 per occurrence, or such greater amount as the State Treasurer may reasonably require from time to time. Such insurance may be carried under a blanket policy with umbrella coverage. Such insurance shall cover any and all liability of the Local Agency and its officials, officers, employees and volunteers. Such insurance shall include (A) coverage for any accident resulting in personal injury to or death of any person and consequential damages arising therefrom; and (B) comprehensive property damage insurance.

(ii) The Local Agency shall maintain or cause to be maintained in full force and effect fire and extended coverage insurance with respect to the Property in such amounts and covering such risks as the Local Agency may reasonably determine from time to time but in any event not less than the aggregate amount of the Agency Principal Components of Agency Installment Payments due hereunder which remain unpaid. Such insurance may be carried under a policy or policies covering other property of the Local Agency. In the alternative, the Local Agency may assume financial responsibility for any physical damage to and/or loss of the Property; *provided, however*, that if the Local

Agency elects this option, the Local Agency hereby covenants and agrees that it will promptly repair or replace the Property promptly upon any loss or damage thereto.

(iii) The insurance required under paragraphs (i) and (ii) above: (A) shall be provided by a financially responsible insurance company authorized to do business in the State; (B) shall name the State and the Trustee as additional insureds thereunder; (C) shall provide that the same may not be canceled or given notice of non-renewal, nor shall the terms of conditions thereof be altered, amended or modified, without at least 45 days' prior written notice being given by the insurer to the State Treasurer; and (D) may be provided in whole or in part through a funded program of self-insurance reviewed at least annually by an insurance actuary.

(iv) A certificate of insurance with respect to the required coverages shall be provided by the Local Agency to the State Treasurer annually on or prior to December 1 with respect to any required insurance maintained pursuant hereto.

(v) The Local Agency will pay or cause to be paid when due the premiums for all insurance policies required by this Section 5.2(p).

## ARTICLE VI EVENTS OF DEFAULT; REMEDIES

Section 6.1 Agency Event of Default. Each of the following shall constitute an "Agency Event of Default" hereunder:

(a) Failure by the Local Agency to pay or cause to be paid any Agency Installment Payment required to be paid hereunder within 10 Business Days of the respective Agency Installment Payment Date;

(b) Failure by the Local Agency to observe or perform any covenant, agreement, term or condition on its part to be observed or performed hereunder, other than as set forth in paragraph (a) above, for a period of 30 days after written notice from the State Treasurer or the Trustee to the Local Agency specifying such failure and requesting that it be remedied; *provided, however,* that such period shall be extended for not more than 60 days if such failure cannot be corrected within such period, and the corrective action is commenced by the Local Agency within such period and diligently pursued until the failure is corrected;

(c) If any statement, representation, or warranty made by the Local Agency in this Local Agency Financing Contract or in any writing delivered by the Local Agency pursuant hereto or in connection herewith is false, misleading, or erroneous in any material respect; and

(d) Inability of the Local Agency to generally pay its debts as such debts become due, or admission by the Local Agency in writing of its inability to pay its debts generally or the making by the Local Agency of a general assignment for the benefit of creditors, or the institution of any proceeding by or against the Local Agency seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, reimbursement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or for

appointment of a receiver, trustee, or other similar officer of it or any substantial part of its property, or the taking of any action by the Local Agency to authorize any of the actions set forth above in this Section 6.1(d).

Notwithstanding the foregoing provisions of this Section 6.1, if by reason of *force majeure* the Local Agency is unable in whole or in part to carry out the covenants, agreements, terms and conditions on its part contained in this Local Agency Financing Contract, the Local Agency shall not be deemed in default during the continuance of such inability. The term “*force majeure*” means the following: acts of God; strikes; lockouts or other industrial disturbances or disputes; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or of its civil or military authorities; orders or restraints of the State or of any of its departments, agencies or officials or civil or military authorities of the State; wars, rebellions, insurrections; riots; civil disorders; blockade or embargo; landslides; earthquakes; fires; storms; droughts; floods; explosions; or any other cause or event not within the control of the Local Agency.

The State, with the prior written consent of the Corporation, may, at its election, waive any default or Agency Event of Default and its consequences hereunder and annul any notice thereof by written notice to the Local Agency to such effect, and thereupon the respective rights of the Parties hereunder shall be as they would have been if such default or Agency Event of Default had not occurred.

Section 6.2 Rights of State Upon Agency Event of Default. Whenever an Agency Event of Default hereunder shall have occurred and be continuing, the State shall have the following rights and may exercise any one or more of the following remedies:

(a) By written notice to the Local Agency, require that the Local Agency promptly return possession and use of the Property to the State at any location specified in the United States (at the cost and expense of the Local Agency) in good repair, working order and condition, ordinary wear and tear excepted;

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the Agency Installment Payments then due and thereafter becoming due, or to enforce the observance or performance of any covenant, agreement or obligation of the Local Agency under this Local Agency Financing Contract;

(c) Exercise any other rights or remedies it may have hereunder or under applicable law; and

(d) Decline to execute any future financing contract on behalf of the Local Agency under the Act.

Section 6.3 No Remedy Exclusive; Non-Waiver. No remedy conferred upon or reserved to the State hereunder or under applicable law is intended to or shall be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Local Agency Financing Contract or now or hereafter existing at law or in equity. No delay or omission to exercise any right or remedy accruing upon a default or an Agency Event of Default hereunder shall impair any such right or remedy or shall be construed to be a waiver of

such default or Agency Event of Default, but any such right or remedy may be exercised from time to time and as often as may be deemed necessary or expedient. In order to exercise any remedy reserved to the State hereunder, it shall not be necessary to give any notice, other than such notice as may be required hereunder. A waiver by the State of any default or Agency Event of Default hereunder shall not constitute a waiver of any subsequent default or Agency Event of Default hereunder, and shall not affect or impair the rights or remedies of the State in connection with any such subsequent default or Agency Event of Default.

## ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.1 Indemnification of State and the Corporation. To the extent permitted by law, the Local Agency hereby releases the State and the Corporation from, agrees that the State and the Corporation shall not be liable for, and agrees to indemnify and hold the State and the Corporation and their respective directors, officers, officials, employees, and agents harmless from, any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever arising out of the ownership or operation of the Property or the acquisition, financing or refinancing thereof. The Local Agency agrees to indemnify and hold the State and the Corporation and their respective directors, officers, officials, employees, and agents harmless from any losses, costs, charges, expenses (including reasonable attorneys' fees), judgments and liabilities incurred by it or them, as the case may be, in connection with any action, suit or proceeding instituted or threatened in connection with the transactions contemplated by this Local Agency Financing Contract or the exercise of rights or the performance of duties of the State or the Corporation under this Local Agency Financing Contract, the Master Financing Contract or the other Series #1# Agreements to which each of them is a Party, except to the extent caused by the gross negligence or willful misconduct of such indemnified party. The indemnification provided in this Section 7.1 shall survive the final payment of the Agency Installment Payments and the termination of this Local Agency Financing Contract for any reason.

Section 7.2 Third Party Beneficiaries. The Corporation and the Trustee, as assignee of the Corporation, shall be third party beneficiaries of this Local Agency Financing Contract.



Section 7.3 Notices to Agency. The notice address for the Local Agency shall be as set forth in the Notice of Intent.

STATE:

STATE OF WASHINGTON OFFICE OF THE  
STATE TREASURER

By \_\_\_\_\_  
Treasurer Representative

LOCAL AGENCY:

CITY OF DAYTON

By \_\_\_\_\_  
Craig George, Mayor

Attested by:

By \_\_\_\_\_  
Trina Cole, City Clerk-Treasurer

# Notice of Intent

State of Washington LOCAL PROGRAM

EXHIBIT A

## Local Agency Information

Legal Name: City of Dayton

County: Columbia

Address: 111 S 1<sup>st</sup>

Contact Person: Trina Cole

Phone: 509-382-2361

E-mail: tcole@daytonwa.com

MCAG No.: 0256

Zip: 99328

Title: City Clerk-Treasurer

Fax: N/A

## Property (Real Estate or Equipment)

Property description (include quantity, if applicable): 2008 International Crosswind Street Sweeper, Mounted on International 4300 Chassis, Maxx Force Diesel Front Engine, John Deere 4045 Rear Engine, Dual Steer, Dual Gutter Brooms, Lifeline Hopper Coating, Broom Assist Head, High Pressure Wash Down, Hour Meter Reads: 1120, Front Engine Hour Meter Reads: 2288, Ex Municipality Unit Mileage: 18,195

Purpose of property (Please be specific and include dept. of use): To provide ongoing maintenance associated with sweeping the City's streets.

Total cost: \$ 89,000

Maximum amount to finance: \$ 89,000

Finance term: 8

Useful life: 8 years

Desired financing date: 05/2018

If **real estate**, the Real Estate Worksheet: ☐ Is attached ☐ Will be provided by (date):

If **equipment**, select how the property purchase price will be paid:

☒ Reimbursement to Local Agency. *Include a copy of the Local Agency's Reimbursement Resolution. To comply with IRS reimbursement requirements, expenditures made more than 60 days prior to the date of the Reimbursement Resolution cannot be reimbursed.*

☐ Direct payment to vendor. *Confirm the vendor is registered in the Statewide Vendor System at <http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx> or call 360.407.8180.*

## Security Pledge

☐ Voted general obligation of local government ☒ Non-voted general obligation of local government

## Other Information

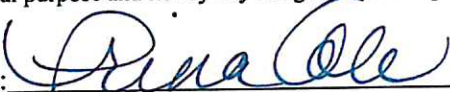
If any of the following apply, please provide a complete discussion on a separate page:

☐ Yes ☒ No Is the local agency a party to significant litigation?

☐ Yes ☒ No Has the agency received a bond rating in the last two years? If yes, bond rating(s):

(attach rating agency letter)

The Local Agency reasonably expects to be reimbursed for original expenditures made to acquire the personal/real property from sale proceeds of certificates of participation in a Personal/Real Property Financing Lease with the State Treasurer in the maximum amount expected to be financed as identified above. The Local Agency reasonably expects that the personal/real property will be used for its governmental purpose and not by any nongovernmental person for private business use.

Signature: 

Date: 05/11/2017

Printed Name: TRINA COLE

Title: City Clerk-Treasurer

EXHIBIT D

**Personal Property Certificate**

Name of Local Agency:	City of Dayton
Address:	111 S 1 <sup>st</sup> Street
	Dayton, WA 99328

All capitalized terms not defined herein shall have the meanings assigned to such terms in the Local Agency Financing Contract that this Exhibit B is attached to. The undersigned, Trina Cole does hereby certify, that she is an Authorized Agency Representative of City of Dayton (the "Local Agency") pursuant to the terms of the Local Agency Financing Contract.

The undersigned, confirms that the Property described below will be placed in use at the location listed below. The undersigned confirms that the Property described below has been delivered to and received by the Local Agency. All installation or other work necessary prior to the use thereof has been completed. The Property has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the Local Agency and complies with all terms of the Master Financing Contract and the Local Agency Financing Contract.

Notwithstanding the foregoing, the undersigned does not waive or limit, by execution of this certificate, any claim against the vendor or any other seller, installer, contractor or other provider of property or services related to the purchase, shipment, delivery, installation or maintenance of the Property.

The Local Agency further confirms that the Property will be used to fulfill an essential governmental function which the Local Agency has the authority to provide in the State.

**PROPERTY INFORMATION**

Description:	<u>2008 International Street Sweeper</u>	Name of Vendor:	<u>Roller &amp; Associates, Inc.</u>
		Address:	<u>7500 York St</u>
			<u>Denver, CO 80299</u>
Serial No.:	<u>1HTMMAAN68J690142</u>		
Tag No.:			

Location of Property Acquired: All paved city streets within City limits of Local Agency.

**INSTRUCTIONS TO STATE TREASURER FOR PAYMENT:**

Disburse to: ☐ Vendor ☒ City ☐ County Treasurer ☐ Other

Entity Name: Dayton, City of

Disbursement Amount: \$ 86,791.25

Method of Payment: ☒ ACH ☐ Wire ☐ Check

ACH/Wire Instructions: Vendor Number: SWWV0001239-00

Attached hereto are:

1. A vendor's invoice for the Property approved by the Local Agency.
2. A Certificate of Insurance, demonstrating liability insurance coverage and stating that insurance will be renewed annually automatically, unless said office notifies the State Treasurer of any discontinuation of coverage.

In connection with the Local Agency's acquisition of the Property as agent of the Washington Finance Officers Association, you are hereby requested to make a disbursement as indicated above.

  
Authorized Agency Representative  
Date: 8/14/17

Countersigned and  
Approved for Payment: \_\_\_\_\_  
Designated State Treasurer Representative  
Date: \_\_\_\_\_

## Certificate Designating Authorized Agency Representatives

I, Trina Cole, City Clerk-Treasurer of the City of Dayton (the "Local Agency"), hereby certify that, as of the date hereof, pursuant to Ordinance No. 1919, the following individuals are each an "Authorized Agency Representative," as indicated by the title appended to each signature, that the following individuals are duly authorized to execute and deliver the Local Agency Financing Agreement to which this Certificate is attached as Exhibit C, and all documentation in connection therewith, including but not limited to the Personal Property Certificate(s) attached thereto as Exhibit B, that the signatures set forth below are the true and genuine signatures of said Authorized Agency Representatives and that pursuant to such ordinance, one of the three following signature(s) is required on each of the aforementioned documents in order to consider such documents executed on behalf of the Local Agency:

\_\_\_\_\_  
Craig George, Mayor

\_\_\_\_\_  
James Costello, Public Works Director

\_\_\_\_\_  
Trina Cole, City Clerk-Treasurer

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Trina Cole, City Clerk-Treasurer

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

By: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at:

Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



EXHIBIT D

SCHEDULE OF AGENCY INSTALLMENT PAYMENTS

[to be attached upon availability]

RESOLUTION NO. 1320

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF DAYTON, WASHINGTON, AUTHORIZING  
THE MAYOR TO SIGN AN INTERLOCAL  
AGREEMENT FOR TEMPORARY PLANNING  
DEPARTMENT SERVICES WITH COLUMBIA  
COUNTY

**WHEREAS**, the City and County are public agencies, as defined by Chapter 39.34 RCW, and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby provide services and facilities in the manner and pursuant to forms of government organizations that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

**WHEREAS**, the City is temporarily in need of planning services; and

**WHEREAS**, the County has planning staff in its Planning and Building Department who have the ability and capacity to temporarily assist the City with its planning services need; and

**WHEREAS**, the Columbia County Planning Department is willing to assist the City with their temporary planning needs.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, HEREBY RESOLVES** as follows:

**Section 1.** That the Mayor is hereby authorized to execute on behalf of the City of Dayton an Interlocal Agreement temporary planning department services with Columbia County in the form attached hereto as Exhibit "A."

**Section 2.** That the Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

**Section 3.** That this resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and signed this \_\_\_\_\_ day of August, 2017.

**CITY OF DAYTON**

\_\_\_\_\_  
Craig George, Mayor

Attest:

\_\_\_\_\_  
Trina Cole, City Clerk-Treasurer

Approved as to Form:

\_\_\_\_\_  
Quinn N. Plant, City Attorney

## **Interlocal Agreement**

### **Between the City of Dayton, Washington and Columbia County Washington for Temporary Planning Department Services**

This Interlocal Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Dayton, Washington, a municipal corporation ("City"), and Columbia County, Washington, a municipal corporation ("County").

WHEREAS, the City and County are public agencies, as defined by Chapter 39.34 RCW, and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby provide services and facilities in the manner and pursuant to forms of government organizations that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, the City is temporarily in need of planning services; and

WHEREAS, the County has planning staff in its Planning and Building Department who have the ability and capacity to temporarily assist the City with its planning services needs.

NOW, THEREFORE, the parties hereto recite, covenant, and agree as follows:

1. Services to be Provided: Subject to the terms and conditions set forth below, the County agrees to provide the City with current and long range planning related services. It is understood that an associate planner may be designated by the County as the City's primary planner. The County will provide planning services on an as-needed basis upon the request of the City. The City agrees to cooperate and assist the County to the extent necessary to provide these planning services. A member of the County's Planning Department staff will attend City meetings as necessary to meet the planning needs of the City.

2. Conflict of Interest: The County reserves the right to decline to provide planning services to the City that may present a conflict of interest with the County's planning objectives. In the event such a conflict exists, the County shall not use any information obtained from the City through the course of the County's performance of this agreement to the detriment of the City. The County will notify the City of any potential or actual conflict of interest within one (1) business day of the County determining that the conflict exists or may exist.

3. Term: The term of this agreement shall be for a period of six (6) months from the date upon which it is fully executed, unless terminated earlier pursuant to section 4.

4. Compensation: The City shall pay the County Four Thousand Dollars (\$4,000) per month in exchange for the services rendered by the County pursuant to this agreement.

5. Independent Contractor: It is understood that the County shall be an independent contractor of the City. This agreement shall not give rise to an employment relationship between



the City and any employee or agent of the County who may perform this agreement on behalf of the County.

6. Modification: This agreement may only be modified by writing that has been signed by the parties hereto.

7. Indemnification/Hold Harmless: Each party to this agreement shall defend, indemnify, and hold the other party, including its agents and employees, harmless from claims, actions, injuries, damages, losses or suits, including attorney's fees, arising or alleged to have arisen directly or indirectly out of or in consequence of the performance of this agreement to the extent caused by the fault or negligence of the indemnitor, or its agents or employees.

8. Applicable Law and Venue: This agreement shall be construed and interpreted in accordance with the laws of the state of Washington. The venue for any dispute or lawsuit between the parties regarding this agreement shall be in the Superior Court of Walla Walla County, Washington.

9. Non-Discrimination: In the performance of their obligations under this agreement, neither party may discriminate in any manner on the basis of race, color, national origin, sex, religion, age, marital status, disability, creed, sexual orientation, or honorable discharged veteran or military status in employment or the provision of services.

10. Severability: If any portion of this agreement is held to be invalid, such a finding will not have any effect on the remainder of the agreement, which shall remain fully in effect and enforceable.

11. Filing/Posting: Prior to its entry into force, this agreement shall be filed with the Columbia County Auditor or, in the alternative, listed by each party on its website or other electronically retrievable public source, as required by RCW 39.34.040.

12. Entire Agreement: This agreement constitutes the entire agreement of the parties.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY. CONTINUE TO  
FOLLOWING PAGE FOR SIGNATURES**

Exhibit "A"  
Resolution No. 1320

City of Dayton, Washington

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Craig George, Mayor

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Date

Columbia County, Washington

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Norm J. Passmore, Commissioner

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Date

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Michael A. Talbott, Commissioner

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Date

---

Merle D. Jackson

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Date

**RESOLUTION NO. 1321**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF DAYTON, WASHINGTON, AUTHORIZING  
THE MAYOR TO SIGN AN INTERLOCAL  
AGREEMENT TO SHARE COSTS OF FLOOD  
CONTROL ZONE DISTRICT CONSULTANT WITH  
COLUMBIA COUNTY**

**WHEREAS**, the City and County are public agencies, as defined by Chapter 39.34 RCW, and are authorized to enter into interlocal agreements on the basis of mutual advantage and thereby provide services and facilities in the manner and pursuant to forms of government organizations that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

**WHEREAS**, the City desires to cooperatively create a county-wide flood control zone district with Columbia County, Washington, pursuant to RCW 86.15; and

**WHEREAS**, the City agrees with Columbia County Commissioners that a consultant's professional services are necessary in order to establish an effective flood control zone district; and

**WHEREAS**, Columbia County Commissioners are willing to partner with the City in establishing a flood control zone district; and

**WHEREAS**, Perteet, Inc., has been selected to provide consulting professional services in the effort to establish a county-wide flood control zone district.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, HEREBY RESOLVES** as follows:

**Section 1.** That the Mayor is hereby authorized to execute on behalf of the City of Dayton an Interlocal Agreement to share costs of flood control zone district consultant with Columbia County in the form attached hereto as Exhibit "A."

**Section 2.** That the Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

**Section 3.** That this resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and signed this \_\_\_\_\_ day of August, 2017.

**CITY OF DAYTON**

\_\_\_\_\_  
Craig George, Mayor

Attest:

\_\_\_\_\_  
Trina Cole, City Clerk-Treasurer

## **Memorandum of Agreement**

### **Between the City of Dayton, Washington and Columbia County Washington to Share Costs of Flood Control Zone District Consultant**

#### **Parties**

This Memorandum of Agreement ("MOA") is entered between the City of Dayton, Washington ("City") and Columbia County, Washington (referred to collectively as the "Parties").

#### **Purpose, Objective and Scope**

This MOA outlines the mutual agreement between the Parties for the sharing of costs and responsibilities related to professional consultant services provided to the parties by Perteet, Inc. ("Consultant"), in support of a joint effort by the Parties to establish a county-wide flood control zone district in Columbia County, Washington, pursuant to RCW 86.15. The parties agree that the Consultant's professional services are necessary in order to establish an effective flood control zone district throughout Columbia County, Washington.

NOW, THEREFORE, the Parties acknowledge and agree to the following:

1. **Approval of Consulting Agreement:** A true and correct copy of the Consultant Agreement for Professional Services ("Consulting Agreement") entered between the Consultant and the County is attached to this MOA as "Addendum 1." The City has reviewed the Consulting Agreement and approves of all its terms. The Parties agree to share equally the fees and costs associated with the services provided by the Consultant pursuant to the Consulting Agreement. The Parties agree that the City shall not be obligated to contribute or pay more than Twelve Thousand Two Hundred Dollars (\$12,200.00) towards the cost of services rendered by the Consultant unless the County has obtained prior approval from the City of the services rendered by the Consultant upon which any additional cost/expense is based.
2. **Sharing of Information:** The Parties agree that all correspondence between their employees or agents and employees or agents of the Consultant pertaining to the Consulting Agreement shall promptly be provided to the other party hereto without the other party being obligated to request a copy of said correspondence. The Parties agree to fully share all information provided to, or received from, the Consultant pertaining to the performance or administration of the Consulting Agreement.
3. **Signatures:** This MOA may be executed in counterpart and faxed or emailed signatures will be binding.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY. CONTINUE TO  
FOLLOWING PAGE FOR SIGNATURES**

Exhibit "A"  
Resolution No. 1321

City of Dayton, Washington

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Craig George, Mayor

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Date

Columbia County, Washington

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Norm J. Passmore, Commissioner

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Date

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Michael A. Talbott, Commissioner

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Date

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Merle D. Jackson, Commissioner

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Date



## CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

This Consultant Agreement for Professional Services ("Agreement") is made and entered into on this \_\_\_\_\_ of July, 2017, between **Columbia County**, 341 E. Main St., Dayton, WA 99328, hereinafter referred to as "CLIENT" and **Perteet, Inc.**, 2302 W. Dolarway Rd., Suite 1, Ellensburg, WA 98926, hereinafter referred to as "CONSULTANT."

CLIENT and CONSULTANT for mutual consideration hereinafter set forth, agree as follows:

### I. OBJECTIVES AND SCOPE OF SERVICES

The CONSULTANT agrees to perform certain consulting, design, studies, and/or advisory services for the CLIENT as follows:

Provide services relating to the Columbia County Flood Control Zone District Formation Consultation as described in Exhibit "A", Scope of Services attached hereto and made a part of this Agreement.

### II. PAYMENT

CLIENT agrees to pay CONSULTANT as compensation for these services as follows:

At CONSULTANT's standard hourly rates plus expenses to a maximum amount payable of Twenty-Four Thousand Four Hundred Dollars (\$24,400.00), as shown in Exhibit "B", Fee Determination, attached hereto and made a part of this agreement. CONSULTANT's standard hourly rates shall be billed as attached hereto. CLIENT shall be invoiced monthly in accordance with the attached Standard Provisions and Schedule of Billing Rates.

### III. STANDARD PROVISIONS

The attached Standard Provisions and Schedule of Billing Rates are incorporated into and made a part of this Agreement. CLIENT and CONSULTANT also agree to the following additional provisions: No further provisions.

**PERTEET, INC.**

**COLUMBIA COUNTY**

By: \_\_\_\_\_  
Signature

Crystal L. Donner  
Name

President  
Title

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Title

Exhibit "A"  
Scope of Services  
Prepared by Perteet, Inc.

**Columbia County Flood Control Zone District Formation**

**INTRODUCTION**

The City of Dayton and Columbia County has requested Perteet (CONSULTANT) to provide services in support of a joint effort by the City of Dayton and Columbia County to establish a Countywide Flood Control Zone District. Perteet will provide professional services to include research, scheduling, and preparation of appropriate documentation to the Columbia County Board of County Commissioners and the City of Dayton City Council to support the work associated with the formation of a Countywide Flood Control Zone District according to RCW 86.15 by January 31, 2018.

**Task 1 – Project Management**

The CONSULTANT will provide the overall project management and planning effort coordination. As the first order of work, the CONSULTANT will schedule a kickoff meeting and develop a project work plan which will include:

- Project Work Plan with key contacts, project stakeholders, and team responsibilities
- Project Budget
- Project Schedule

A draft of the project work plan will be handed out to the project team at the kickoff meeting.

As part of the project, the CONSULTANT will prepare monthly progress reports that describe the work items that were accomplished during a given month, as well as a forecast of work to be completed over the following month. The monthly progress reports will also identify other issues or problems that may occur in any given month. The CONSULTANT will submit these monthly progress reports to the County's Project Manager with the monthly invoices. The CONSULTANT Project Manager will notify the County's Project Manager, in writing (memo format), of scope and/or budgetary issues that are inconsistent with this Scope of Work.

**Assumptions:**

- The project kickoff meeting will be held in Dayton, Washington.
- The project will be completed in approximately six (6) months.

**Deliverables:**

- Kickoff meeting agenda and minutes
- Work plan (PDF)
- Project schedule (PDF)
- Project meeting agenda and minutes



## **Task 2 – Planning Services**

### **Task 2.1 – Attend Planning Team Meetings**

The CONSULTANT will attend the monthly Team meetings as necessary. The CONSULTANT will utilize these meetings as a method of providing frequent updates to the planning team and gathering input necessary for the planning project. Telephone or video conference calls may be used. The CONSULTANT will also be required to attend up to three critical path public meetings as directed by the CLIENT.

### **Task 2.2 – Develop legislative process schedule**

The CONSULTANT will provide for developing the legislative process schedule which will include forms, information transfer, and briefing responsibilities. These scheduled processes will follow the prescribed methods discussed in RCW 86.15. The CONSULTANT will facilitate a discussion with the planning team to determine the best method for inclusion to various Board or Council agendas.

#### **Deliverables**

- Legislative Process Schedule in MS Project Form
- County and City formal legislative materials as needed

### **Task 2.4 – Prepare a Countywide Flood Control Zone District work plan**

The CONSULTANT will prepare a Work Plan for the FCZD. This work plan will serve as the information needed to present to the public as formation of the FCZD is considered. The Project Team will approve the Work Plan as part of the overall public outreach program

#### **Deliverables**

- Annual Flood Control Zone District Work Plan



Exhibit "B"

Project Columbia County - Flood Control Zone District Formation Consultation Contract Start Date 9/1/2017 Last Update date 6/29/2017  
Client Columbia County Contract End Date 12/31/2018 Perteeet Project No. 20150261.000  
PM Kirk Holmes Contract Duration: 15 Months

Task	Billing Rate	Sr. Associate	Planner II	Accountant	Total Hours	Labor Dollars
		\$190.00	\$105.00	\$90.00		
Project Management			32.00	17.00	49.00	\$4,890.00
Total Project Management		0.00	32.00	17.00	49.00	\$4,890.00
Planning Services		20.00	120.00		140.00	\$16,400.00
Total Planning Services		20.00	120.00	0.00	140.00	\$16,400.00
Expenses						
Total Expenses		0.00	0.00	0.00	0.00	\$0.00
Total Hours		20.00	152.00	17.00	189.00	
Total Dollars		\$3,800.00	\$15,960.00	\$1,530.00		\$21,290.00

Expenses:	
Mileage - \$ 535	3,111
Totals:	3,111

SUMMARY		
Labor		\$21,290.00
Expenses		\$3,111.00
Subconsultants		\$0.00
CONTRACT TOTAL		\$24,401.00

**PERTEET, INC.**  
***Standard Provisions***

All professional services provided by Perteet, Inc. ("CONSULTANT") are subject to the terms and conditions set forth in this Agreement and any written modifications to this Agreement and signed by both CONSULTANT and CLIENT.

1. Signing this form shall be construed as authorization by CLIENT for CONSULTANT to proceed with the services, unless otherwise provided for in the Agreement.
2. CONSULTANT'S Direct expenses shall be those costs incurred on or directly for the CLIENT'S project. Direct expenses shall be billed in accordance with the fee schedule attached to this Agreement.
3. Construction cost estimates provided by CONSULTANT will be prepared on a basis of experience and judgment, but since CONSULTANT has no control over market conditions or bidding procedures, CONSULTANT cannot warrant that bids or ultimate construction costs will not vary from these cost estimates.
4. CONSULTANT shall be responsible, to the level of competency presently maintained by other practicing professional engineers and surveyors providing the same type of services in CLIENT'S community, for the professional and technical soundness, accuracy and adequacy of all designs, drawings, specifications, and other services and materials furnished under this Agreement. CONSULTANT makes no other warranty, express or implied.
5. All reports, PS&E materials, and other data, furnished to the CONSULTANT by the CLIENT shall be returned. All designs, drawings, specifications, and other work products prepared by the CONSULTANT prior to completion or termination of this Agreement are instruments of service for this project and are property of the CLIENT. Reuse by the CLIENT or by others acting through or on behalf of the CLIENT of any such instruments of service, not occurring as a part of this project, shall be without liability or legal exposure to the CONSULTANT.
6. Limitation of Liability. CLIENT agrees to require CONSULTANT be named as an additional insured for all insurance policies carried by contractors, subcontractors, and suppliers on which CLIENT has been or will be named as an additional insured. Regardless of the presence or absence of insurance coverage, CONSULTANT shall not be liable for loss or damage occasioned by delays beyond CONSULTANT's control, or for loss of earnings, loss of use, or other incidental or consequential damages suffered by CLIENT or others, however caused. CONSULTANT's liability to CLIENT shall be limited as follows: (a) for insured liabilities, to the amount of insurance then available to fund any settlement, award or verdict; (b) for uninsured liabilities, to 50 percent (50%) of the fee earned by CONSULTANT under this Agreement. This Limitation of Liability was negotiated by CLIENT and CONSULTANT. CLIENT expressly agrees to this Limitation of Liability.
7. Either CLIENT or CONSULTANT may terminate this Agreement by giving 30 days written notice to the other party. In such event, CLIENT shall forthwith pay CONSULTANT in full for all services previously authorized and performed prior to the effective date of termination. If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.
8. In the event legal action is brought by CLIENT or CONSULTANT against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses as may be set by the court. The venue of any legal action shall be Snohomish County, Washington.
9. Monthly invoices will be issued by CONSULTANT for all services performed under the terms of this Agreement. Invoices are due and payable upon receipt. 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 the "Scope of Work".
10. Washington State Sales Tax, if required by law, is not included in the total price and will be an additional charge.

**PERTEET, INC.**  
***Schedule of 2017 Billing Rates***

**Engineering, Planning and Environmental Classifications**                      **2017 Hourly Rate**

Principal	225.00
Senior Associate	195.00
Senior Engineer/Manager	180.00
Lead Engineer/Manager	160.00
Specifications Writer	160.00
Engineer III	130.00
Engineer II	110.00
Engineer I	95.00
Senior Planner/Manager	160.00
Lead Planner/Manager	140.00
Program Support Specialist III	115.00
Program Support Specialist II	105.00
Program Support Specialist I	80.00
Planner III	115.00
Planner II	105.00
Planner I	80.00
Senior Ecologist/Manager	160.00
Lead Ecologist/Manager	140.00
Ecologist III	115.00
Ecologist II	100.00
Ecologist I	80.00
Lead Technician/Designer	110.00
Technician III	95.00
Technician II	80.00
Technician I	70.00
Contract Administrator	95.00
Accountant	90.00
Graphics Specialist	90.00
Clerical	75.00

**Expert Witness Rates:**

Consulting & Preparation Time	@ standard hourly rates
Court Proceedings & Depositions (4 hour minimum)	@ 1.5 times hourly rates

**PERTEET, INC.**  
***Schedule of 2017 Billing Rates***  
Page 2

**Direct Expenses**

	<b><u>Rate</u></b>
Living & travel expenses outside of service area	Cost plus 10 percent
Authorized Subconsultants	Cost plus 10 percent
Outside Services (printing, traffic counts, etc.)	Cost plus 10 percent
CADD Station	\$10.00 per hour
Project Controls / Primavera	\$10.00 per hour
GIS / Traffic Modeling	\$15.00 per hour
Color Copies	\$.80 each
Mileage	@ current federal rate

**Survey Classifications**

	<b><u>2017 Hourly Rate</u></b>
Principal Surveyor	185.00
Survey Manager	145.00
Professional Land Surveyor II	125.00
Professional Land Surveyor I	115.00
Office Technician	100.00
Field Technician III	95.00
Field Technician II	85.00
Field Technician I	65.00
One Person Survey Crew	95.00
Two Person Survey Crew	175.00
Three Person Survey Crew	235.00

**Direct Survey Expenses**

	<b><u>Rate</u></b>
Dual Frequency GPS Receiver	\$150.00 per unit per day
Robotic Total Station Data Collection System	\$100.00 per day
Digital Level	\$50.00 per day
Laser Scanner	\$65.00 per hour
Survey monuments & cases	Cost plus 10 percent

**PERTEET, INC.**  
***Schedule of 2017 Billing Rates***  
Page 3

<b><u>Construction Classifications</u></b>	<b><u>2017 Hourly Rate</u></b>
Construction Engineering Supervisor	175.00
Construction Engineering Manager	165.00
Construction Manager	120.00
Assistant Construction Manager	120.00
Construction Engineer III	125.00
Construction Engineer II	110.00
Construction Engineer I	85.00
Senior Construction Observer	120.00
Construction Observer II	80.00
Construction Observer I	70.00
Senior Construction Technician	105.00
Construction Technician III	100.00
Construction Technician II	90.00
Construction Technician I	75.00

**RESOLUTION NO. 1322**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
DAYTON, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE  
A SEPARATION PACKAGE AGREEMENT WITH KAREN SCHARER**

**WHEREAS**, Karen Scharer's employment with the City of  
Dayton ended on July 31, 2017; and

**WHEREAS**, the City offered Ms. Scharer a Separation  
Package Agreement to facilitate her transition out of City  
employment and ensure that any disputes of any kind are  
resolved amicably; and

**WHEREAS**, Ms. Scharer agreed with the Separate Package  
Agreement and its terms on August 14, 2017.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF  
DAYTON, WASHINGTON, HEREBY RESOLVES** as follows:

**Section 1.** That the Mayor is hereby authorized to  
execute on behalf of the City of Dayton the Separation  
Package Agreement in the form attached hereto as Exhibit  
"A."

**Section 2.** That the Mayor is hereby authorized to  
implement such administrative procedures as may be  
necessary to carry out the directions of this legislation.

**Section 3.** That this resolution shall take effect  
and be in full force upon passage and signatures hereon.

Dated and signed this \_\_\_\_\_ day of August, 2017.

**CITY OF DAYTON**

\_\_\_\_\_  
Craig George, Mayor

AI No. 7(C)

Attest:

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Trina Cole, City Clerk-Treasurer



## **SEPARATION PACKAGE AGREEMENT**

This Separation Package Agreement ("Agreement") is made between Karen Scharer ("Scharer") and the City of Dayton, Washington ("the City"), a municipal corporation.

**Background and Purpose:** Scharer's employment with the City ended on July 31, 2017 and the City has provided Scharer with her final paycheck, including all wages and unused vacation benefits earned through July 31, 2017. Even though Scharer's employment has ended, the City has offered Scharer this Separation Package Agreement to facilitate her transition out of City employment and ensure that any and all disputes of any kind are resolved amicably.

Therefore, the terms of the Agreement are as follows:

1. **Agreement Benefits Scharer Will Receive:** In exchange for Scharer's promises, waivers and releases of claims in this Agreement:
  - a. The City will pay Scharer the sum of five thousand, seven hundred and thirty-three dollars and eighty cents (\$5,733.80), less applicable withholding and authorized deductions, an amount intended to be approximately equivalent to one month of Scharer's regular base pay during her employment.
  - b. The City will pay 100% of the cost of the premium to continue Scharer's current medical/dental insurance benefits through COBRA continuation coverage through September 30, 2017 at her currently elected benefit levels. Scharer understands and agrees that she must timely elect such COBRA benefits and that these premiums will be paid directly to the insurance carrier on her behalf. Scharer also understands and agrees that, if she wishes to continue such benefits after September 30, 2017, she will be solely responsible for timely payment of all applicable premiums.
  - c. The City will provide Scharer with a signed letter of reference at set forth in Exhibit B to this Agreement and will respond to all employment reference inquiries directed to the City's Mayor by providing only Scharer's dates of employment and position(s) held. Scharer agrees to direct all employment reference inquiries to the City's Mayor.
2. **Waiver and Release of Claims (Scharer's Promise Not to Sue):** Except as stated in paragraph 3 below, Scharer irrevocably and unconditionally promises not to start or continue any lawsuit (including any judicial/court proceeding or arbitration) against the City of Dayton, Washington and/or any of its current, past and future council members, managers, employees, representatives, attorneys, agents and insurers in their individual and representative capacities (the "Released Parties"). Scharer understands and agrees that this promise means that she is releasing all of the Released Parties from, and waiving all of her rights with respect to: any and all claims, liabilities, causes of action, debts, obligations, promises, agreements and demands, both in law and in equity, which she has, may have or claim to have, based upon or in any way related to her employment and separation from



employment with the City whether those claims are known or unknown to Scharer when she signs this Agreement.

These waivers, releases and promises not to sue include but are not limited to all claims based on: negligent or intentional tortious conduct; express or implied contract; obligations of fair dealing and good faith of any kind; wrongful discharge; and any other tort and/or common law theory of any kind. These waivers, releases and promises not to sue also include any claim for fraud, including but not limited to fraud in the inducement of this Agreement. These waivers, releases and promises not to sue also include but are not limited to: claims for any form of monetary relief (including but not limited to claims for any form of damages of any kind, back pay or front pay, punitive damages, and attorney fees and costs, etc.), reinstatement, reemployment (including but not limited to reinstatement and/or reemployment under the injured worker reinstatement and reemployment laws), and claims for any and all forms of damages or other remedies arising under federal, state and local statutes, regulations, rules, ordinances and/or rules of decisions dealing with employment matters and discrimination and retaliation in employment (including but not limited to any claims under: the Revised Code of Washington, Title VII of the Civil Rights Act of 1964, the Post Civil War Civil Rights Acts, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Family Medical Leave Act, the Age Discrimination in Employment Act, the Older Worker Benefit Protection Act, the Employee Retirement Income Security Act, the Occupational Health and Safety Act of 1970, and the Lilly Ledbetter Fair Pay Act of 2009, all as amended as well as any and all administrative regulations issued under such authorities). *By signing below, Scharer also acknowledges and represent that she has been paid all wages of any kind that are due and owing to her as a result of her employment services through July 31, 2017 and that no un-asserted claims for wages of any kind exist.*

These waivers, releases and promises not to sue also specifically include any claims of any kind based on the state and federal constitution (including any and all claims of violations of substantive or procedural due process rights) as well as any other applicable statutory, contract, tort or other common law theories. Scharer also agrees to dismiss any pending lawsuits and arbitrations relating to claims that she has waived and released above if any such lawsuits or arbitrations have been filed.

3. Exceptions to Waiver and Release of Claims: The waivers and releases of claims in this Agreement are intended to be broad and comprehensive and to reach the maximum scope and extent permitted by law. The waivers and releases of claims in paragraph 2 above do not, however, apply to: any claim Scharer may have for enforcement of this Agreement, to claims challenging the enforceability of this Agreement under the Age Discrimination in Employment Act, to claims that cannot be waived as a matter of law, to claims for statutory worker's compensation or unemployment benefits, if any.

The waivers and releases of claims in paragraph 2 above do not prevent Scharer from filing, providing information or otherwise cooperating with any other administrative charge or complaint with the Equal Employment Opportunity Commission or other state and federal enforcement agencies. The waivers, releases and promises not to sue in this Agreement do, however, bar and prevent Scharer



from receiving any form of monetary relief (such as back or front pay, or other money damages like attorney fees and costs, etc.) or equitable relief (such as reinstatement and reemployment) as a result of any administrative complaint, claim, or investigation. *Scharer and the City intend the waivers and releases in this Agreement to reach the maximum extent permitted by law.*

4. No Future Employment: Scharer and the City agree that it is in the parties' mutual best interests to avoid any future employment relationship. For this reason, and in exchange for the separation payments and benefits provided under this Agreement, Scharer agrees that she will not at any time in the future seek or accept employment with the City, whether directly or indirectly, as a temporary, leased, or regular employee. Scharer further agrees that if she should seek such employment, whether knowingly or unknowingly, at any time in the future, she expressly waives the right to sue under applicable law if she is denied employment or is terminated upon mistaken hiring by the City.
5. Medicare Eligibility: By signing this Agreement, Scharer is representing that she is not Medicare eligible, is not a Medicare beneficiary, and that she does not reasonably expect to become Medicare eligible within 30 months. Scharer further represents that no Medicare payments have been made to her or on her behalf and that no liens, claims, demands, subrogated interests or other claims/causes of action exist arising from any claims released by this Agreement. Scharer also represents and warrant that the information provided to Released Parties for confirmation of her Medicare status, including her name, gender, date of birth, and Social Security Number, is complete, accurate, and current as of the date of this Agreement. Scharer agrees that she, and not the Released Parties, will be responsible for satisfying and paying any such liens, claims, demand, subrogated interests or other causes of action that may exist or be asserted to exist now or in the future with respect to the released claims in this Agreement. Scharer also agrees to indemnify and hold harmless all Released Parties from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that have been or may in the future be asserted by Medicare and/or persons or entities acting on behalf of Medicare, or any other person or entity, arising from or related to this Agreement and payments under it, any conditional payments made by Medicare or Medicaid, or any medical expenses or payments arising from or related to any claims released by this Agreement. This indemnification obligation includes all damages, double damages, fines, penalties, attorneys' fees, costs, interest, expenses, and judgments incurred by or on behalf of any Released Parties in connection with such claims, demands, subrogated interests, or causes of action.
6. Purpose: It is understood and agreed that this Agreement is intended to assist in Scharer's transition from City employment and, in return, to assure that no claims will be made against the Released Parties. Nothing in the offering or the signing of this Agreement is to be construed as an admission of liability or wrongdoing on the part of anyone. Scharer's rights have not been violated.
7. "Scharer": As used in this Agreement, "Scharer" means Karen Scharer, her heirs, executors, administrators, assigns, agents, attorneys, her marital community if any, and any other person or entity by, for, or through whom she may act.



8. Entire Agreement and Severability: This Agreement reflects the entire agreement between Scharer and the City regarding this Separation Agreement. By signing below, Scharer agrees that she is not relying on any promises or representations other than what is stated in this Agreement. By signing this Agreement, Scharer also acknowledges and affirms that she fully understands that this Agreement may be used by any of the Released Parties as a complete defense to any claim, demand, action, or suit for damages that may be asserted by her or by other persons or agencies acting on her behalf.

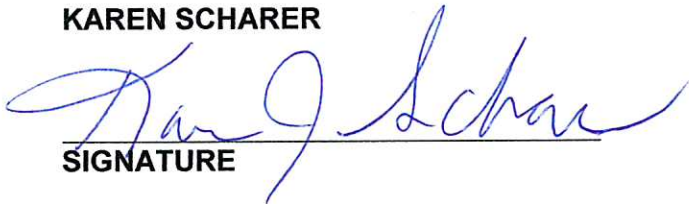
If any provision or part of any provision of this Agreement is found to be legally unenforceable and/or against public policy, such provision or part of any provision shall be deleted or modified by the Court or Arbitrator only as necessary to be enforceable. All other parts will remain in effect. If the waivers, releases and/or promises not to sue with respect to any of the waived and released claims are deemed to be invalid, unenforceable, or illegal, then the Court or Arbitrator making such determination shall reduce the effect of the waiver, release and promise not to sue only to the extent necessary in order to preserve the enforceability of the remainder of the waivers, releases and promises not to sue.

9. Understanding This Agreement: Every effort has been made to write this Agreement in plain and clear language. If she does not understand this Agreement, Scharer may contact the City of Dayton Mayor for clarification. Scharer is also advised to consult with an attorney at her own expense before signing this Agreement.
10. Arbitration of Disputes: In the event an issue arises regarding whether Scharer or the City has breached this Agreement and the matter cannot be resolved informally, any dispute regarding such issues shall be submitted to binding arbitration in the City of Dayton, Washington. In any dispute between Scharer and the City, the arbitration shall be conducted in pursuant to the employment rules of the American Arbitration Association ([www.adr.org](http://www.adr.org)). Each party shall be responsible for its own attorney's fees and related costs at arbitration or on appeal, except as otherwise required by under Washington State statutory authority.
11. Timing of Offer and Effective Date: This offer will remain open for twenty-one (21) days from the time Scharer receives her copy. Furthermore, Scharer may revoke this Agreement at any time within seven (7) days following the day she signs it by delivering a written notice of revocation to the City Mayor at the City of Dayton, at 111. S. First Street, Dayton, WA, 99328. If Scharer does not revoke this Agreement, it will become effective immediately upon the expiration of the seven (7) day period.
12. Payment Date: Provided the Agreement becomes effective and the City has received an original Agreement signed by Scharer and all City property and information in Scharer's possession, then payment will be made in a single lump sum payment seven (7) business days after the date this Agreement becomes effective. Payment together with the signed reference letter noted above, will be sent via Certified Return Receipt

Mail to the most recent address in Employee's personnel file unless Employee specifies a different address below. Payment will be considered to be delivered on the date mailed.

**THIS IS A WAIVER AND RELEASE OF CLAIMS. PLEASE READ CAREFULLY. BY SIGNING BELOW, EACH PARTY ACKNOWLEDGES THAT THEY HAVE HAD AMPLE OPPORTUNITY TO CONSULT WITH A LAWYER, UNDERSTAND ALL THE PROVISIONS OF THIS AGREEMENT, HAVE SIGNED THIS AGREEMENT FREELY AND VOLUNTARILY WITHOUT RESERVATION, AND UNDERSTAND THAT THIS IS THEIR FULL AND ENTIRE AGREEMENT.**

**KAREN SCHARER**

  
SIGNATURE

8/14/2017  
Date

Address for mailing:

107 W Richmond Ave

Dayton, WA 99328

**FOR THE CITY OF DAYTON, WA**

\_\_\_\_\_  
**CRAIG GEORGE, MAYOR**

\_\_\_\_\_  
Date

## PROMULGATION MEMORANDUM

The 2017 Columbia County Comprehensive Emergency Management Plan (CEMP) is hereby adopted this \_ day of August, 2017, as the official guiding document to provide emergency services in the event of a disaster or major emergency to the governments of Columbia County, the City of Dayton and the Town of Starbuck.

The CEMP is the framework for mitigation, preparedness, response, and recovery activities and is intended to provide a structure for standardizing plans throughout Columbia County to facilitate interoperability between local, state, and federal governments. By coordinating phases of emergency management, the CEMP will help minimize the impacts of disasters and other emergencies within our jurisdictions.

**APPROVED:**

**CITY OF DAYTON  
MAYOR AND CITY COUNCIL**

\_\_\_\_\_  
Craig George, Mayor

\_\_\_\_\_  
Dain Nysoe, Councilmember

\_\_\_\_\_  
Mike Parris, Councilmember

\_\_\_\_\_  
Christine Broughton, Councilmember

\_\_\_\_\_  
Kathy Berg, Councilmember

\_\_\_\_\_  
Byron Kaczmariski, Councilmember

\_\_\_\_\_  
Delphine Bailey, Councilmember

\_\_\_\_\_  
Zac Weatherford, Councilmember

**ATTEST:**

\_\_\_\_\_  
Trina Cole, City Clerk/Treasurer