



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

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**PRELIMINARY AGENDA**  
**REGULAR MEETING**  
**Monday, May 8, 2017**  
**7:00 p.m.**  
*Craig George, Mayor*

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**1. CALL TO ORDER**

A. Roll Call

**2. CONSENT AGENDA - Action**

A. Approve Council Minutes - April 10 and April 24, 2017

B. Voucher Warrants as audited by the Finance Committee

C. Payroll Warrants - April 30, 2017

**3. SPECIAL GUESTS AND PUBLIC COMMENT**

A. All Wheels Weekend Report - Bette Lou Crothers, Chairman

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

**5. REPORTS OF CITY OFFICERS**

**6. UNFINISHED BUSINESS**

A. ACTION: Authorize Ordinance No. 1910, An Ordinance Of The City Of Dayton, Columbia County, Washington Adopting The Shoreline Master Program Comprehensive Update As An Element To The Dayton Comprehensive Plan Amending DMC 20-01.010, And As Part Of The DMC Establishing Title 15, The Shoreline Management Code; And, Repealing Resolution 724.

B. ACTION: Authorize ORDINANCE NO. 1911, An Ordinance Of The City Of Dayton, Washington, Relating To The Water And Sewer System Of The City; Providing For The Issuance Of A Water And Sewer Revenue Bond Of The City In The Principal Amount Of Not To Exceed \$1,100,000, For The Purpose Of Providing Funds To Pay The Cost Of The Acquisition, Construction And Installation Of Improvements To The City's Water And Sewer System; Fixing The Date, Form, Maturity, Interest Rate, Terms And Covenants Of The Bond; Providing For The Registration And Authentication Of The Bond; Creating And Adopting Certain Funds And Accounts; Providing For The Issuance Of Additional Bonds; Appointing The City's Designated Representative Pursuant To RCW 39.46.040(2) To Approve The Final Terms Of The Issuance, Sale And Delivery Of The Bond; And Providing For Other Matters Properly Related Thereto, All As More Particularly Set Forth Herein.

C. ACTION: Authorize Task Order for Anderson Perry & Associates to provide general engineering services associated with 2017 Street Improvements Plan

**7. NEW BUSINESS**

- A. ACTION: Award the W. Main Street (SR 12) Sidewalk Project contract to the lowest, responsible bidder, Moreno & Nelson Construction Co., upon Transportation Improvement Board's approval
- B. ACTION: Authorize Ordinance No. 1912, 2017 Budget Amendment for Association Safety Grant Award and 2016 Ending Fund Balances
- C. ACTION: Proclaim May 2017 Older Americans Month

**8. FINAL PUBLIC COMMENT**

**9. ADJOURN**



Date: May 3, 2017  
TO: Dayton City Council Members and Mayor Craig George  
FM: Karen Scharer, Planning Director  
RE: Adoption of Ord. 1910, the Final Approval of the Shorelines Master Program Comprehensive Update.

**REQUEST:** Motion to approve Ord. 1910, the Shorelines Master Program Comprehensive Update.  
*See links to documents below.*

**BACKGROUND:**

Sept. 14, 2015 City Council adopted the draft Shoreline Master Program (SMP) Comprehensive Update for the purpose of forwarding to Ecology, Ord. 1882.

March 27, 2017 Ecology issued letter of approval regarding the Dayton SMP Comprehensive Update with one recommendation change. Interested parties were notified of Ecology's action.

April 10, 2017 City Council approved a motion to accept the one SMP Comprehensive Update change recommended.

April 24, 2017 Council 1<sup>st</sup> Reading of Ord. 1910.

In Ord. 1910, the SMP Comprehensive Update Document is separated into the Shoreline Master Program (SMP) – Comprehensive Plan Shoreline Element, and Shoreline Management Code (SMC) with the Shoreline Map.

Council received hard copies of documents listed in **BOLD**.  
Links are provided to all documents listed below.

**Ord. 1910 – Adopting the Shoreline Master Program Comprehensive Update**

**Exhibit 1 Shoreline Master Program (SMP)**

Exhibit 2 - Inventory & Characterization Report

Exhibit 3 - Cumulative Impacts Analysis, Revised

Exhibit 4 - Shoreline Restoration Plan

**Exhibit 5 - Adding Subsection "C." to DMC 20-01.010**

**Exhibit 6 - Shoreline Code (SMC) & 6A Shoreline Map**

**NEXT STEPS:**

May 8, 2017 City Council considers Ordinance 1910, adoption of the final "SMP Comprehensive Update".

May 2017 Ecology issues letter of final approval.

May 2017 Effective Date for the SMP Comprehensive Update is dependent upon Ecology & Dayton dates of actions.

May 2017 SMP consultant prepares informational materials for residential property owners in the Shoreline Management Area.

May /June 2017 Planning sends notice of adoption to all property owners in Shoreline Area.

ORDINANCE NO. 1910

AN ORDINANCE OF THE CITY OF DAYTON, COLUMBIA COUNTY, WASHINGTON, ADOPTING THE SHORELINE MASTER PROGRAM COMPREHENSIVE UPDATE AS AN ELEMENT TO THE DAYTON COMPREHENSIVE PLAN; AMENDING DMC 20-01.010; ESTABLISHING AS PART OF THE DAYTON MUNICIPAL CODE, TITLE 15, THE SHORELINE MANAGEMENT CODE; AND, REPEALING RESOLUTION 724.

**WHEREAS**, the Washington Shoreline Management Act (RCW 90.58, referred to herein as "SMA") recognizes that shorelines are among the most valuable and fragile resources of the state, and that state and local government must establish a coordinated planning program to address the types and effects of development occurring along shorelines of state-wide significance; and

**WHEREAS**, RCW 90.58.080 requires local governments to develop or amend master programs for the regulation and uses of the shorelines of the state consistent with the guidelines adopted by the Washington State Department of Ecology (herein "Ecology"); and

**WHEREAS**, RCW 36.70A.480 provides that the goals and policies contained in a local shoreline master program (SMP) shall be an element of the City's Comprehensive Plan adopted under the Growth Management Act, (Ch. 36.70A RCW); and

**WHEREAS**, on May 19, 2015, the Planning Commission held a public hearing, received evidence, public testimony and comments, staff and consultant input, and certain documents and information; and

**WHEREAS**, on June 16, 2015, the Planning Commission forwarded a recommendation to the City Council which includes the necessary master program elements required by WAC 173-26-191(1)(b), the master program basic requirements set forth in WAC 173- 26-191(2) and the general master program provisions set forth in WAC 173-26-221; and

**WHEREAS**, under Ordinance 1882, adopted on September 14, 2015, the City of Dayton (herein "City") locally adopted the Shoreline Master Program Comprehensive Update for the purpose of forwarding the draft document to the Washington State Department of Ecology for State review and approval; and

**WHEREAS**, consistent with the requirements of WAC 173-26-186(8)(d), an analysis of potential cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions was conducted. The results of this analysis are documented in the Shoreline Cumulative Impacts Analysis Report, final dated April 7, 2015 and revised April 20, 2016; and

**WHEREAS**, a city wide re-examination of the proposed Urban Conservancy, Native Conservation Areas (NCAs) width was completed. This review occurred as a result of comments from a property owner of land in the mapped Urban Conservancy Designation. The consulting ecologist determined a reduction of the NCA from 150 feet to 125 feet was appropriate. Ecology concluded that the City's proposed reduction of the NCA a in the Urban Conservancy designation from 150 feet to 125 feet is consistent with the SMA and applicable guidelines; and

**WHEREAS**, on March 27, 2017, Ecology concluded City's proposed comprehensive SMP update is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that approval of the proposed Shoreline Master Program Comprehensive Update contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation; and

**WHEREAS**, on April 10, 2017, the Dayton City Council by motion accepted Ecology's recommended reduction to the Urban Conservancy NCA from 150 feet to 125 feet, and

**WHEREAS**, consistent with Ord. 1882 and subsequent to Ecology's approval of the City's Shoreline Master Program Comprehensive Update, the City is incorporating the goals and policies as an SMP Element of the City's Comprehensive Plan and regulations as a new title to the Dayton Municipal Code (DMC), Title 15 Shoreline Management Code (SMC).

**WHEREAS**, the City Council desires to repeal the existing 1975, SMP, with an effective date concurrent with the effective date for the newly adopted SMP and SMC.

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

**Section 1.** The City Council hereby concludes the following with regard to the Shoreline Master Program Comprehensive Update adopted and approved in this ordinance:

A. Implementation of the Shoreline Master Program Comprehensive Update will result in "no net loss" of shoreline ecological functions relative to the established baseline and may ultimately produce an improvement in shoreline ecological functions through incentive-based restoration; and

B. The Shoreline Master Program Comprehensive Update is consistent with and meets the State Shoreline Master Program Guidelines established under Chapter 173-26WAC; and

C. The Shoreline Master Program Comprehensive Update is consistent with and implements the Shoreline Management Act (Chapter 90.58 RCW) and the Growth Management Act (Chapter 36.70A RCW).

**Section 2.** The City Council hereby adopts the City of Dayton Shoreline Master Program (SMP), as the Shoreline Element of the Dayton Comprehensive Plan, a copy of which is attached to this ordinance as Exhibit 1 and incorporated herein by this reference.

**Section 3.** The City Council hereby adopts the SMP appendices forwarded to Ecology, as supporting documentation and guidelines for the SMP and SMC. They include the “Inventory and Characterization Report”, “Cumulative Impacts Analysis, Revised”, and “Shoreline Restoration Plan”, copies of which are attached to this ordinance as Exhibits 2-4 and incorporated herein by this reference.

**Section 4.** The City DMC Title 20, “Comprehensive Plan”, Section 20-01.010, “Establish”, is hereby amended adding a new subsection “C.” to read as follows:

As set forth in Exhibit 5 attached to this Ordinance and incorporated herein by this reference.

**Section 5.** Title 15, Shoreline Management Code (SMC). The City of Dayton hereby adds a new title to the DMC to read as follows:

As set forth in Exhibit 6 attached to this Ordinance, including a new Shoreline Designations Map (Appendix A), and incorporated herein by this reference.

**Section 6.** Resolution # 724. All provisions of the currently-adopted SMP by Resolution 724 shall remain in full force and effect until the effective date of this ordinance.

**Section 7.** Severability. If any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality of any other section, sentence, clause, or phrase of this Ordinance.

**Section 8.** Effective Date. This Ordinance shall be in full force and effect five days after publication of this Ordinance or a summary thereof in the official newspaper of the City of Dayton as provided by law, and provided that Ecology's final action on the Dayton Shoreline Master Program Comprehensive Update has become effective.

Passed by the City Council, City of Dayton, this \_\_\_\_ day of May, 2017, by a vote of \_\_\_\_\_ for, \_\_\_\_\_ against, and \_\_\_\_\_ abstaining.

APPROVED:

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

ATTEST:

\_\_\_\_\_  
Trina D. Cole, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Quinn N. Plant, City Attorney  
Menke Jackson Beyer, LLP

EXHIBITS:

- 1 Shoreline Master Program
- 2 Inventory and Characterization Report
- 3 Cumulative Impacts Analysis, Revised
- 4 Shoreline Restoration Plan
- 5 DMC Title 20 Amendment
- 6 Shoreline Management Code with Appendix A - Shoreline Map

ORDINANCE SUMMARY BY TITLE ONLY FOR PUBLICATION PURPOSES  
ORDINANCE NO. 1910

AN ORDINANCE OF THE CITY OF DAYTON, COLUMBIA COUNTY, WASHINGTON, ADOPTING THE SHORELINE MASTER PROGRAM COMPREHENSIVE UPDATE AS AN ELEMENT TO THE DAYTON COMPREHENSIVE PLAN; AMENDING DMC 20-01.010; ESTABLISHING AS PART OF THE DAYTON MUNICIPAL CODE, TITLE 15, THE SHORELINE MANAGEMENT CODE; AND, REPEALING RESOLUTION 724.

SECTION 1. Conclusion.  
SECTION 2. Adoption as Shoreline Element.  
SECTION 3. Adoption of Appendices.  
SECTION 4. Amend Title 20.  
SECTION 5. Title 15m Shoreline Management Code.  
SECTION 6. Resolution No. 724.  
SECTION 7. Severability.  
SECTION 8. Effective Date.

The full text of Ordinance 1910 adopted the 8<sup>th</sup> day of May, 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.

By: /s/ Craig George, Mayor  
Attest: /s/ Trina Cole, City Clerk-Treasurer  
Approved as to form: /s/ Quinn Plant, City Attorney

Published: 05/18/2017  
Dayton Chronicle

CITY OF DAYTON, WASHINGTON

ORDINANCE NO. 1911

AN ORDINANCE of the City of Dayton, Washington, relating to the water and sewer system of the City; providing for the issuance of a water and sewer revenue bond of the City in the principal amount of not to exceed \$1,100,000, for the purpose of providing funds to pay the cost of the acquisition, construction and installation of improvements to the City's water and sewer system; fixing the date, form, maturity, interest rate, terms and covenants of the bond; providing for the registration and authentication of the bond; creating and adopting certain funds and accounts; providing for the issuance of additional bonds; appointing the City's designated representative pursuant to RCW 39.46.040(2) to approve the final terms of the issuance, sale and delivery of the bond; and providing for other matters properly related thereto, all as more particularly set forth herein.

PASSED: May 8, 2017

*This document prepared by:*

*FOSTER PEPPER PLLC  
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*\*The cover page, table of contents and section captions of this Ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this Ordinance.*

CITY OF DAYTON, WASHINGTON

ORDINANCE NO. \_\_\_\_

AN ORDINANCE of the City of Dayton, Washington, relating to the water and sewer system of the City; providing for the issuance of a water and sewer revenue bond of the City in the principal amount of not to exceed \$1,100,000, for the purpose of providing funds to pay the cost of the acquisition, construction and installation of improvements to the City's water and sewer system; fixing the date, form, maturity, interest rate, terms and covenants of the bond; providing for the registration and authentication of the bond; creating and adopting certain funds and accounts; providing for the issuance of additional bonds; appointing the City's designated representative pursuant to RCW 39.46.040(2) to approve the final terms of the issuance, sale and delivery of the bond; and providing for other matters properly related thereto, all as more particularly set forth herein.

THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, DO ORDAIN as follows:

**ARTICLE I. GENERAL PROVISIONS**

**Section 1.01 Findings.** The Council finds and determines that:

(a) The City is a municipal corporation duly organized and existing under the laws of the State. Pursuant to the provisions of chapters 35.67, 35.92 and 35A.80 RCW, the City is authorized to acquire, construct, install and operate water and sewer systems. Pursuant to Ordinance No. 1622 passed and approved by the Mayor and Council on July 14, 1998, the City combined its water and sewer systems as authorized by RCW 35.67.331. The City is authorized to conduct proceedings pursuant to chapters 35.41, 35.67, 35.92, 35A.40 and 39.46 RCW.

(b) The City currently has Outstanding the 2010 Bonds, the USDA Bonds and the State Loans, all of which are payable from Net Revenue.

(c) The Revenue of the System and benefits to be derived from the operation and maintenance of the System, at the rates to be charged for service from the System, will be more than sufficient to meet all Costs of Maintenance and Operation and to permit the setting aside into the Debt Service Fund of the amounts of Net Revenue that, together with Assessments, will be sufficient to pay the principal of and interest on the Parity Bonds when due. In creating the Debt Service Fund, and in fixing the amounts to be paid therein out of the Revenue of the System, the Council has had due regard to Costs of Maintenance and Operation and the payments required to be made for the Parity Bonds and other obligations payable from Revenue of the System. The Council has not obligated the City to set aside into the Debt Service Fund a greater amount of Revenue of the System than, in the Council's judgment, will be available over and above Costs of Maintenance and Operation and the amount of Revenue of the System previously pledged for the payment of Outstanding obligations.

(d) There is not presently and will not be at the time of issuance of the Bond any deficiency in the Debt Service Fund or in the Reserve Fund. The principal of and interest on the Bond will be payable out of the Debt Service Fund. No utility local improvement district was formed in connection to the issuance of the Bond. This Ordinance provides for the funding of the Reserve Fund in an amount equal to the Reserve Fund Requirement as of the date the Bond is issued.

(e) This Ordinance provides for deposits into the Reserve Fund in the amounts required by Section 3.05(i)(iii)(4) of Ordinance No. 1795. Not later than the Issue Date, the City will receive a certificate from an independent professional engineer or certified public accountant of the type required by Section 3.05(i)(iii)(5) of Ordinance No. 1795.

(f) Based on the findings and determinations made in the preceding paragraphs: the Bond will be an “Additional Bond” within the meaning of Ordinance No. 1795, when issued; the payments into the Debt Service Fund for the payment of the Bond will constitute a lien and charge upon the Net Revenue of the System of equal rank with the charge and lien on such Net Revenue for the payment into the Debt Service Fund for the payment of the 2010 Bonds and the USDA Bonds; and the Bond shall rank on a parity of lien with one another and with the 2010 Bonds, the USDA Bonds and any future Additional Bonds that may be issued.

(g) RCW 39.46.040(2) provides that an ordinance authorizing the issuance of bonds may authorize an officer or employee of the City to serve as the City’s Designated Representative and to accept, on behalf of the City, an offer to purchase those bonds so long as the acceptance of such offer is consistent with terms established by an ordinance that establishes the following Final Terms for the Bond (or parameters with respect thereto): the amount, date, denominations, interest rates, payment dates, final maturity, redemption rights, price, minimum savings for refunding bonds, and any other terms and conditions deemed appropriate by the Council.

(h) The Council, pursuant to RCW 39.46.040(2), desires to delegate authority to the Treasurer (or in the absence or disability of the Treasurer, the Mayor), for a limited time, to accept the Final Terms of, and execute, the Bond Purchase Agreement, subject to the parameters for such Final Terms set forth in this Ordinance.

**Section 1.02 Definitions.** The words and phrases set forth in this Ordinance with initial capitalization shall have the respective meanings ascribed to such words and phrases in this section unless the context clearly requires otherwise.

(a) **“Acquisition or “Acquire”** shall include purchase, securing, lease, receipt by gift or grant, condemnation, transfer or other acquirement, or any combination thereof.

(b) **“Additional Bonds”** shall mean any bonds that the City may hereafter issue pursuant to Section 3.05(i) hereof that are secured by a lien upon the Revenue of the System for the payment of the principal thereof and interest thereon equal to the lien upon the Revenue of the System to pay the principal of and interest on the Parity Bonds.

(c) **“Adjusted Net Revenue”** shall mean the Net Revenue for the fiscal year preceding the year in which Additional Bonds are issued, as adjusted by an engineer or

accountant to take into consideration changes in Net Revenue estimated to occur due to one or more of the following factors:

(1) any increase or decrease in Net Revenue that would result if any change in rates and charges adopted prior to the date of such certificate and subsequent to the beginning of such 12-month period had been in force during the full 12-month period;

(2) any increase or decrease in Net Revenue that is estimated to result from any additions, betterments and improvements to and extensions of any facilities of the System which (a) became fully operational during such 12-month period, (b) were under construction at the time of such certificate, or (c) will be constructed from the proceeds of the Additional Bonds to be issued; and/or

(3) the additional Net Revenue that would have been received if any customers added to the System prior to the date of such certificate and subsequent to the beginning of such 12-month period were customers for the entire period.

(d) **“Annual Debt Service”** shall mean the amount required in a given calendar year for the payment of the principal of and interest on the Parity Bonds, except interest to be paid from the proceeds of the Parity Bonds. With respect to any Term Bonds, the words “principal of and interest on the Parity Bonds” shall be deemed to exclude from “principal” an amount of Term Bonds equal to the mandatory deposits of money into any sinking fund account to provide for payment of the principal of such Term Bonds, and from “interest” the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof all mandatory sinking fund deposits as of the date required and interest on the Term Bonds provided for by such deposits only to the dates of the respective deposits. In the event the City issues Additional Bonds which bear a variable rate of interest, the assumed interest rate for such variable rate Additional Bonds for purposes of forecasting Annual Debt Service: (i) while the USDA Bonds are Outstanding (except as provided in clause (ii) of this sentence), shall be an interest rate specified on the revenue bond index in *The Bond Buyer* within 30 days prior to the sale of such Additional Bonds; and (ii) at such time as the USDA Bonds are no longer Outstanding (or such time Ordinance Nos. 1700 and 1714 are appropriately amended, if sooner), shall be determined by reference to such indices as the City deems reasonable, taking into account the formula for calculating such variable interest rate.

(e) **“Assessment Bonds”** shall mean the principal amount of Parity Bonds Outstanding at any time which is equal to the aggregate principal amount of nondelinquent Assessments remaining to be paid into the Debt Service Fund at such time plus the principal amount of Assessments previously paid and on deposit in the Debt Service Fund.

(f) **“Assessment Income”** shall mean the principal of and interest on Assessments levied in any utility local improvement district and pledged to be paid into the Debt Service Fund and, at such time as the USDA Bonds are no longer Outstanding (or such time Ordinance Nos. 1700 and 1714 are appropriately amended, if sooner), the Reserve Fund. In the case of Assessments payable in installments while the USDA Bonds are Outstanding (except as provided in the following sentence), Assessment Income shall be allocated to the years in which it would be received if the unpaid principal balance of each assessment roll were paid in equal

principal amounts over the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance confirming such assessment roll. At such time as the USDA Bonds are no longer Outstanding (or such time Ordinance Nos. 1700 and 1714 are appropriately amended, if sooner), Assessment Income shall be allocated to the years in which it would be received if the installments remaining to be paid from time to time are not paid earlier than at the times and at the rate provided in the ordinance confirming such assessment roll.

(g) **“Assessments”** shall mean any special assessments which may be levied in any utility local improvement district of the City created for the Acquisition, construction or installation of additions and betterments to and extensions of the System, if such assessments are pledged to be paid into the Debt Service Fund or the Reserve Fund, and includes any installments of assessments and any interest or penalties which may be due thereon.

(h) **“Average Annual Debt Service”** shall mean the average amount of the Annual Debt Service which will become due on the Parity Bonds for the period from the date of such calculation until the final maturity date of the Parity Bonds then Outstanding.

(i) **“Bond”** shall mean the City’s Water and Sewer Revenue Bond, 2017, authorized to be issued pursuant to this Ordinance.

(j) **“Bond Counsel”** shall mean Foster Pepper PLLC or any firm of lawyers nationally recognized and accepted as bond counsel and so engaged by the City for that purpose.

(k) **“Bond Purchase Agreement”** shall mean an offer to purchase the Bond, presented by the Purchaser and accepted by the Designated Representative, setting forth certain terms and conditions of the issuance, sale and delivery of the Bond.

(l) **“Bond Register”** shall mean the registration records of the City, maintained by the Registrar, on which shall appear the name and address of the Registered Owner.

(m) **“City”** shall mean the City of Dayton, Washington.

(n) **“Clerk”** shall mean the *de facto* or *de jure* Clerk of the City, or other officer of the City who is the custodian of the seal of the City and of the records of the proceedings of the Council, and her successors in functions, if any.

(o) **“Code”** shall mean the Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

(p) **“Costs of Maintenance and Operation”** shall mean all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expense, but excludes depreciation, payments for debt service or into reserve funds, costs of capital additions to or replacements of the System, municipal taxes, or payments to the City in lieu of taxes.

(q) **“Council”** shall mean the City Council of the City.

(r) **“Debt Service Fund”** shall mean the City’s “Water and Sewer System Debt Service Fund” created by Section 5.03 of the City’s Ordinance No. 1623 dated July 28, 1998, or any successor fund.

(s) **“Default Trustee”** shall mean the trustee appointed by the Registered Owner pursuant to Section 3.06(c) of this Ordinance if an Event of Default occurs.

(t) **“Designated Representative”** shall mean the officer or employee of the City appointed in Section 2.03 of this Ordinance to serve as the City’s Designated Representative in accordance with RCW 39.46.040(2) for purposes of accepting and executing, on behalf of the City, the Bond Purchase Agreement on terms consistent with this Ordinance and the parameters set forth herein.

(u) **“Event of Default”** shall have the meanings set forth in Section 3.06(a) of this Ordinance.

(v) **“Final Terms”** shall mean the terms and conditions for the sale of the Bond, including, but not limited to the amount, date or dates, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final maturity, redemption rights, and price.

(w) **“Government Obligations”** shall mean cash or those obligations described under the definition of government obligations in RCW 39.53.010(4), as it now reads or hereafter may be amended, and which are otherwise lawful investments for the City at the time of such investment.

(x) **“Issue Date”** shall mean the date of initial issuance and delivery of the Bond to the Purchaser in exchange for the purchase price of the Bond.

(y) **“Maturity Date”** shall mean December 1, 2031.

(z) **“Maximum Annual Debt Service”** shall mean an amount equal to the greatest Annual Debt Service with respect to the Parity Bonds for the then current or any future calendar year.

(aa) **“Mayor”** shall mean the *de facto* or *de jure* Mayor of the City (including the Mayor pro tempore in the Mayor’s absence), or any presiding officer or titular head of the City, and his successors in functions, if any.

(bb) **“Net Revenue”** shall mean the Revenue of the System less the Costs of Maintenance and Operation.

(cc) **“Ordinance”** shall mean this Ordinance passed and approved by the Mayor and Council on May 8, 2017.

(dd) **“Ordinance No. 1623”** shall mean the City’s Ordinance No. 1623 dated July 28, 1998 that created the Debt Service Fund and the Reserve Fund.

(ee) **“Ordinance No. 1700”** shall mean the City’s Ordinance No. 1700 dated February 10, 2004 that authorized the issuance of the 2004 Bond.

(ff) **“Ordinance No. 1714”** shall mean the City’s Ordinance No. 1714 dated October 12, 2004 that authorized the issuance of the 2004A Bond.

(gg) **“Ordinance No. 1795”** shall mean the City’s Ordinance No. 1795 dated February 17, 2010 that authorized the issuance of the 2010 Bonds.

(hh) **“Outstanding”** when used with reference to the Parity Bonds, as of any particular date, shall mean all such Parity Bonds that have been issued, executed, authenticated and delivered under the ordinances authorizing their issuance, except: (i) Parity Bonds canceled because of payment or redemption prior to their stated dates of maturity; and (ii) any Parity Bond (or portion thereof) deemed to have been paid or defeased pursuant to the ordinance under which it was issued.

(ii) **“Parity Bonds”** shall mean the 2010 Bonds, the USDA Bonds, the Bond and any Additional Bonds that are hereafter issued.

(jj) **“Project”** shall mean the Acquisition, construction and installation of improvements to the System.

(kk) **“Purchaser”** shall mean the corporation, firm, association, partnership, bank, trust, or other legal entity or group of entities selected by the Designated Representative to purchase the Bond.

(ll) **“Registered Owner”** shall mean the person named as the registered owner of the Bond on the Bond Register.

(mm) **“Registrar”** shall mean the fiscal agent of the State (as designated by the State Finance Committee from time to time pursuant to chapter 43.80 RCW), currently, U.S. Bank, National Association, and any successors or assigns, who has been appointed by the Treasurer as registrar, authenticating agent, transfer agent, exchange agent and registrar with respect to the Bond in the manner provided in this Ordinance.

(nn) **“Reserve Fund”** shall mean the City’s “Water and Sewer System Reserve Fund” created by Section 5.04 of Ordinance No. 1623, or such successor fund.

(oo) **“Reserve Fund Facility”** shall mean a surety bond, insurance policy or letter of credit that constitutes all or a part of the Reserve Fund Requirement, provided such surety bond, insurance policy or letter of credit satisfies the conditions set forth in Section 3.04(b) of this Ordinance.

(pp) **“Reserve Fund Requirement”** shall mean, for each issue of Parity Bonds, an amount equal to the lesser of (1) the Maximum Annual Debt Service with respect to such issue of Parity Bonds, (2) 125 percent of the Average Annual Debt Service with respect to such issue of Parity Bonds, or (3) 10 percent of the proceeds (as defined under the Code) of such issue of Parity Bonds.

(qq) **“Revenue Fund”** shall mean, collectively, the City’s existing sewer utility fund (currently, Fund No. 401) and the City’s existing water utility fund (currently, Fund No. 403).

(rr) **“Revenue of the System”** shall mean all earnings, revenue and money, except Assessment Income, received by the City from or on account of the operation of the System, including the income from investments of money in the Revenue Fund, the Debt Service Fund and the Reserve Fund, or from any other investment thereof, except the income from investments irrevocably pledged to the payment of any other water and sewer revenue bonds pursuant to a plan of retirement or refunding. The words “Revenue of the System” also shall include any federal or state reimbursements of operating expenses to the extent such expenses are included as Costs of Maintenance and Operation of the System. The City may consider revenue derived from rates charged by a storm water sewer utility or system as “Revenue of the System” only to the extent such revenues are deposited into the Revenue Fund; provided nothing herein shall be construed as requiring the City to deposit such revenues into the Revenue Fund.

(ss) **“State”** shall mean the State of Washington.

(tt) **“State Loans”** shall mean the City’s revenue obligations for borrowed money from the State Public Works Trust Fund, outstanding on March 31, 2017, in the aggregate principal amount of \$\_\_\_\_\_.

(uu) **“System”** shall mean the City’s combined water collection, treatment and distribution system and sewage collection and treatment system, as it now exists and as it may later be added to, extended and improved, and shall include buildings, structures, utilities or other income-producing facilities from the operation of or in connection with which revenues for the payment of the Parity Bonds will be derived, and the lands appertaining thereto.

(vv) **“Term Bonds”** shall mean any Parity Bonds that are identified as such in the ordinances authorizing the issuance thereof, the payment of which is provided for by a requirement for mandatory sinking fund deposits into the Debt Service Fund.

(ww) **“Treasurer”** means the appointive officer of the City who is responsible under the City Charter, if any, and/or City ordinance for fulfilling the various duties of a “city treasurer” specified in the Revised Code of Washington.

(xx) **“USDA Bonds”** shall mean the 2004 Bond and the 2004A Bond.

(yy) **“2004 Bond”** shall mean the City’s Water and Sewer Revenue Bond, Series 2004, issued pursuant to Ordinance No. 1700.

(zz) **“2004A Bond”** shall mean the City’s Water and Sewer Revenue Bond, Series 2004A, issued pursuant to Ordinance No. 1714.

(aaa) **“2010 Bonds”** shall mean the City’s Water and Sewer Revenue Refunding Bonds, 2010, issued pursuant to Ordinance No. 1795.

## ARTICLE II. PROVISIONS PARTICULAR TO THE BOND

**Section 2.01 Authorization of the Bond.** The City is hereby authorized to issue, sell and deliver the Bond for the purpose of providing the money required to accomplish the Project, including the costs related to the issuance, sale and delivery of the Bond. The Bond shall be a special obligation of the City payable solely out of the Debt Service Fund and the Reserve Fund, and shall be a valid claim of the Registered Owner only as against the Debt Service Fund, the Reserve Fund and the amount of Revenue of the System and Assessment Income pledged to those funds. The Bond shall not be a general obligation of the City. The City's full faith, credit and resources are not pledged for the payment of the Bond.

**Section 2.02 Description of the Bond.** The Bond shall be designated as the "City of Dayton, Washington, Water and Sewer Revenue Bond, 2017" (as further designated pursuant to the parameters for the Final Terms set forth in Attachment A, which is attached to this Ordinance and incorporated herein by this reference). The Bond shall be issued in the principal amount of not to exceed \$1,100,000; shall be numbered R-1; shall be issued only in fully registered form; and shall mature on the Maturity Date. The Bond shall be dated the Issue Date, shall bear interest from such Issue Date at the rate and shall mature in the year and principal amount, all as set forth in the Bond Purchase Agreement accepted by the Designated Representative pursuant to Section 2.03 of this Ordinance.

**Section 2.03 Authority to Approve Bond Purchase Agreement.** It is anticipated that the Bond will be sold to the Purchaser and that the Purchaser will present a Bond Purchase Agreement to the City offering to purchase the Bond. Pursuant to RCW 39.46.040(2), the Treasurer, or in the absence or disability of the Treasurer, the Mayor, is hereby appointed as the City's Designated Representative and is authorized and directed on the City's behalf to accept the Final Terms of, and execute, the Bond Purchase Agreement subject to the parameters for such Final Terms set forth in Attachment A. Final Terms shall be confirmed in the Bond Purchase Agreement and/or separate certificate approved and executed by the Designated Representative in connection with the issuance of the Bond. The authority granted to the Designated Representative by this Section 2.03, and the authority to issue the Bond pursuant to this Ordinance, shall expire on December 31, 2017, if the Issue Date has not occurred by such date.

### **Section 2.04 Form and Execution of the Bond.**

(a) The Bond shall be prepared in a form consistent with the provisions of this Ordinance and State law and shall be signed by the Mayor and Clerk, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon. The Bond shall be prepared at City expense and shall be delivered to the Purchaser in accordance with the terms of the Bond Purchase Agreement, together with the approving legal opinion of Bond Counsel regarding the Bond.

(b) No Bond shall be valid or obligatory for any purpose, or entitled to the benefits of this Ordinance, unless such Bond bears a certificate of authentication manually signed by the Registrar stating: "This Bond is the fully registered City of Dayton, Washington, Water and Sewer Revenue Bond, 2017, described in the Bond Ordinance." A minor deviation in the

language of such certificate shall not void a certificate of authentication that otherwise is substantially in the form of the foregoing. The authorized signing of a certificate of authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this Ordinance.

(c) If any officer whose facsimile signature appears on the Bond ceases to be an officer of the City authorized to sign bonds before the Bond bearing his or her facsimile signature is authenticated or delivered by the Registrar or issued by the City, this Bond nevertheless may be authenticated, delivered and issued and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. The Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bond.

### **Section 2.05 Registrar, Registration and Transfer of Bond.**

Pursuant to RCW 39.46.030, the Treasurer has appointed the Registrar to act as the City's bond registrar, authenticating agent, transfer agent and exchange agent with respect to the Bond. The Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bond, which books shall be open to inspection by the City at all times. The Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond transferred in accordance with the provisions of the Bond and this Ordinance, to serve as the City's paying agent for the Bond and to carry out all of the Registrar's powers and duties under this Ordinance. The Registrar shall be responsible for its representations contained in the Registrar's Certificate of Authentication on the Bond.

The Bond may be assigned or transferred only: (a) in whole; (b) to a single investor that is a qualified institutional buyer; (c) if endorsed in the manner provided thereon and surrendered to the Registrar; and (d) if the transferee provides the Registrar with an executed transfer certificate in substantially the form to be attached to the Bond. Any such transfer shall be without cost to the Registered Owner or transferee (other than any cost incurred by the Registered Owner or transferee in preparing and delivering such transfer certificate) and shall be noted on the Bond Register. The Registrar shall not be obligated to assign or transfer the Bond during the 15 days preceding any installment payment or prepayment date.

**Section 2.06 Payment of the Bond.** Both principal of and interest on the Bond shall be payable in lawful money of the United States of America and shall be paid by check, draft or electronic transfer of the Registrar sent to the Registered Owner so that the Registered Owner receives said payments when due at the address appearing on the Bond Register. Upon receipt of the final installment payment of principal of and interest on the Bond, whether on the Maturity Date or upon prepayment, the Registered Owner shall present and surrender the Bond to the Registrar to be destroyed or cancelled in accordance with law. If any installment of principal is not paid when due, the City shall be obligated to pay interest on that principal at the same rate provided in the Bond until that principal, together with interest thereon, is paid in full.

## **Section 2.07 Prepayment and Redemption Provisions.**

(a) The Bond shall be subject to prepayment and redemption at the option of the City on terms acceptable to the Designated Representative, as set forth in a Bond Purchase Agreement, consistent with the parameters set forth in Attachment A. If the Bond is subject to redemption, then the following Sections 2.07 (b) and 2.07(c) shall apply.

(b) The City shall cause notice of any intended redemption of the Bond to be given not less than 15 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Registered Owner of the Bond at the address appearing on the Bond Register at the time the Registrar prepares the notice, and the requirements of this sentence shall be deemed to have been fulfilled when notice has been mailed as so provided, whether or not it is actually received by the Registered Owner of the Bond. Interest on that portion of the principal of the Bond called for redemption shall cease to accrue on the date fixed for redemption unless such principal is not redeemed when presented pursuant to the call.

(c) In the case of an optional redemption, the notice may state that the City retains the right to rescind the redemption notice and the related optional redemption of the Bond by giving a notice of rescission to the affected Registered Owner at any time prior to the scheduled optional redemption date. Any notice of optional redemption that is so rescinded shall be of no effect, and the Bond shall remain Outstanding hereunder.

(d) The City reserves the right and option to purchase the Bond in the open market at any time at any price acceptable to the City plus accrued interest to the date of purchase.

**Section 2.08 Refunding or Defeasance of the Bond.** The City may issue a refunding bond pursuant to the laws of the State or use money available from any other lawful source to pay when due the principal of and interest on the Bond, or any portion thereof, included in a refunding or defeasance plan (the "Defeased Bond"), and to redeem and retire, refund or defease such Defeased Bond and to pay the costs of such refunding or defeasance. If the City deposits irrevocably with an escrow agent money and/or Government Obligations sufficient in amount, together with the earnings thereon, are sufficient to pay the principal of and premium, if any, on the Defeased Bond becoming due, together with all interest accruing thereon to the due date or redemption date, and pays or makes provision for payment of all fees, costs and expenses of that escrow agent due or to become due with respect to the Defeased Bond, all liability of the System with respect to the Defeased Bond shall cease, the Defeased Bond shall be deemed not to be outstanding hereunder and the Registered Owner of the Defeased Bond shall be restricted exclusively to the money or Government Obligations so deposited, together with any earnings thereon, for any claim of whatsoever nature with respect to the Defeased Bond, and that escrow agent shall hold that money, Government Obligations and earnings in trust exclusively for the Registered Owner and that money, Government Obligations and earnings shall not secure any other Parity Bonds under this Ordinance. After establishing such an escrow account, the City may apply any money in any other fund or account established for the payment or redemption of the Defeased Bond to any lawful purposes as it shall determine, subject only to the rights of the owners of any other Parity Bonds then outstanding. The Defeased Bond shall be excluded from computation of the Coverage Requirements and other covenants under this Ordinance.

**Section 2.09 Pledge of Revenue and Lien Position.** There are hereby pledged, for the equal and ratable benefit of the Registered Owner from time to time of the Bond, as security for the payment of the principal of, premium, if any, and interest on the Bond: (1) all Net Revenue and all rights of the City to receive Net Revenue; (2) all Assessment Income; and (3) all money and securities held in the Debt Service Fund and the Reserve Fund, including the investments thereof, if any, and subject to the provisions of this Ordinance permitting the application of amounts hereunder to the purposes set forth herein. Such pledge is hereby declared to be a prior lien and charge on the foregoing superior to all other liens and charges of any kind whatsoever, except that, liens on the foregoing have been created in favor of the 2010 Bonds and the USDA Bonds and may be created in favor of Additional Bonds on a parity with the pledge under this Section 2.09 in favor of the Bond. The lien created by this Ordinance is hereby declared to be senior to the lien that secures the State Loans.

**Section 2.10 Preservation of Tax Exemption for Interest on the Bond.** The City covenants that it will take all actions necessary to prevent interest on the Bond from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Bond or other funds of the City treated as proceeds of the Bond at any time during the term of the Bond which will cause interest on the Bond to be included in gross income for federal income tax purposes.

**Section 2.11 Designation of Bond as a “Qualified Tax-Exempt Obligation”.** The City designates the Bond as a “qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Code, and makes the following findings and determinations: (1) the Bond does not constitute a “private activity bond” within the meaning of Section 141 of the Code; (2) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) that the City and any entity subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) will issue during 2017 will not exceed \$10,000,000; and (3) the amount of tax-exempt obligations, including the Bond, designated by the City as a “qualified tax-exempt obligation” for the purposes of Section 265(b)(3) of the Code during 2017 will not exceed \$10,000,000.

**Section 2.12 Compliance Policies.** The Council hereby adopts the post-issuance compliance policies and procedures for tax-exempt obligations attached hereto as Attachment B in connection with the Bond and the City’s other tax-exempt obligations.

### **ARTICLE III. PROVISIONS GOVERNING ALL PARITY BONDS**

**Section 3.01 Application of Revenue of the System.** All Revenue of the System (together with Assessment Income, if any, with respect to subparagraphs *Second* and *Third*) shall be deposited into the Revenue Fund as collected, and shall be used only for the following purposes and in the following order of priority:

*First*, to pay the Costs of Maintenance and Operation;

*Second*, to pay the interest on the Parity Bonds;

*Third*, to pay the principal of the Parity Bonds, and to make any mandatory sinking fund deposits required to be made for the payment of the principal of any Term Bonds;

*Fourth*, to make all payments required to be made into the Reserve Fund to secure the payment of the Parity Bonds, and to make any payments required in connection with a Reserve Fund Facility; and

*Fifth*, for any other lawful City purposes, including but not limited to, payments of municipal taxes or payments to the City in lieu of taxes, the payment of the principal of and interest on any obligations that have a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds, the redemption or by purchase in the open market, any obligations of the City payable out of the Revenue of the System, and the Acquisition and construction of additions, betterments, improvements and repairs to, or extensions and replacements of, the System.

At such time as the USDA Bonds are no longer Outstanding (or such time Ordinance Nos. 1700 and 1714 are appropriately amended, if sooner), Assessment Income also may be deposited in the Reserve Fund if such deposits are authorized in an ordinance authorizing the issuance of the Assessment Bonds, but only to the extent such Assessment Income is not then needed to make the deposits required by subparagraphs *Second* and *Third* above.

**Section 3.02 The Revenue Fund.** There has heretofore been created and shall continue to be maintained in the office of the Treasurer, separate and distinct from all other funds and accounts of the City, the City's sewer utility fund (currently, Fund No. 401) and the City's water utility fund (currently, Fund No. 403). Such funds are collectively referred to herein as the "Revenue Fund." Money shall be withdrawn from the Revenue Fund solely for the purposes, and in the priority of order, set forth in Section 3.01 of this Ordinance.

**Section 3.03 The Debt Service Fund.**

(a) The Debt Service Fund has heretofore been created and shall continue to be maintained in the office of the Treasurer, separate and distinct from all other funds and accounts of the City, for the purpose of paying the principal of, premium, if any, and interest on the Parity Bonds. Accrued interest received from the sale of the Parity Bonds, if any, shall be deposited in the Debt Service Fund. Amounts received due to rounding the principal amount of Additional Bonds to the next denomination of \$5,000 and proceeds of Additional Bonds to pay for any contingencies shall: (i) while the USDA Bonds are Outstanding (except as provided in clause (ii) of this sentence), be deposited in the Debt Service Fund; and (ii) at such time as the USDA Bonds are no longer Outstanding (or such time Ordinance Nos. 1700 and 1714 are appropriately amended, if sooner), be deposited or otherwise used in the manner prescribed by the ordinance(s) authorizing the issuance of such Additional Bonds. All Assessment Income shall: (i) while the USDA Bonds are Outstanding (except as provided in clause (ii) of this sentence), be deposited in the Debt Service Fund; and (ii) at such time as the USDA Bonds are no longer Outstanding (or such time Ordinance Nos. 1700 and 1714 are appropriately amended, if sooner), be deposited in the Debt Service Fund and/or in the Reserve Fund in the manner prescribed by the ordinance(s) authorizing the issuance of the Assessment Bonds to which such Assessment Income is associated.

(b) As long as any Parity Bond remains Outstanding, the City hereby irrevocably obligates, pledges and binds itself to set aside and pay from the Net Revenue into the Debt Service Fund, together with Assessment Income and such other funds as are on hand and available in the Debt Service Fund, those amounts necessary to pay installments of interest, or principal and interest, next coming due on the Parity Bonds. With respect to the Parity Bonds, deposits into the Debt Service Fund shall be made on or before the twentieth day of each month in an equal monthly amount that, together with other money available therefor in the Debt Service Fund, will be sufficient to pay the principal and interest becoming due and payable on the next payment date on the Parity Bonds.

(c) Money in the Debt Service Fund may be invested as permitted by law, provided such investments shall mature prior to the date on which such money shall be needed for required scheduled payments (whether such scheduled payments be of interest or of interest and principal). All interest earned and income derived by virtue of such investments shall remain in the Debt Service Fund. Subject to the other provisions of this paragraph, money in the Debt Service Fund and the Reserve Fund may be combined for the purpose of purchasing investments, *provided*, the records of the City shall show to which account the respective portions of any such combined investments are credited.

#### **Section 3.04 The Reserve Fund.**

(a) The Reserve Fund has heretofore been created and shall continue to be maintained in the office of the Treasurer, separate and distinct from all other funds and accounts of the City, for the purpose of securing the payment of the principal of and interest on the Parity Bonds. On the Issue Date, the City shall cause money to be deposited into the Reserve Fund, in an amount equal to the Reserve Fund Requirement for the Bond, to be thereafter held as the Reserve Fund Requirement for the Bond.

The City hereby covenants and agrees that, when the required deposits have been made into the Reserve Fund, it will at all times maintain therein an amount at least equal to the Reserve Fund Requirement. The City hereby reserves the right to recalculate the Reserve Fund Requirement from time to time, and at any time. Whenever there is a sufficient amount in the Debt Service Fund and the Reserve Fund to pay the principal of, premium, if any, and interest on all Parity Bonds then Outstanding, the money in the Reserve Fund may be used to pay such principal, premium and interest. Money in the Reserve Fund may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any Parity Bonds, as long as the money left remaining on deposit in the Reserve Fund is equal to the Reserve Fund Requirement. If at any time the amount in the Reserve Fund exceeds the Reserve Fund Requirement, such surplus may be deposited into the Debt Service Fund.

In the event there shall be a deficiency in the Debt Service Fund such that maturing installments of principal of and interest on the Parity Bonds cannot be met, such deficiency shall be made up from the Reserve Fund by the withdrawal of money therefrom. Any deficiency created in the Reserve Fund by reason of any such withdrawal shall then be made up out of Revenue of the System after making the necessary provision for the payments required to be made by subparagraphs First, Second and Third of Section 3.01 of this Ordinance.

(b) In lieu of or in substitution for money or investments, the City may fund the Reserve Fund with a Reserve Fund Facility for the benefit of the Registered Owners of the Parity Bonds for all or any part of the Reserve Fund Requirement, *provided* that:

(1) any such Reserve Fund Facility that is a surety bond or insurance policy shall be issued by an insurance company or association duly authorized to do business in the State, and either: (A) the claims paying ability of such insurance company or association is rated the highest rating accorded by a nationally recognized insurance rating agency; or (B) obligations insured by a surety bond or an insurance policy issued by such company or association are rated at the time such surety bond or insurance policy is delivered, without regard to qualification of such rating by symbols such as “+” or “-” or numerical notation, in the highest rating category by Moody’s Investors Service, Inc. or Standard & Poor’s Ratings Service;

(2) any such Reserve Fund Facility that is a letter of credit shall be issued by a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provision of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provision of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States, the unsecured or uncollateralized long-term debt obligations of which, or long-term obligations secured or supported by a letter of credit issued by such person, are rated at the time such letter of credit is delivered, without regard to qualification of such rating by symbols such as “+” or “-” or numerical notation, in at least the third highest rating category by Moody’s Investors Service, Inc. or Standard & Poor’s Ratings Service; and

(3) prior to funding the Reserve Fund with a Reserve Fund Facility, the Treasurer shall have received: (A) an opinion of counsel to the effect that such Reserve Fund Facility has been duly authorized, executed and delivered by the provider thereof and is enforceable in accordance with its terms; and (B) in the event such provider is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the City.

Notwithstanding the foregoing, if at any time after a Reserve Fund Facility has been deposited in the Reserve Fund the unsecured or uncollateralized long-term debt of the provider thereof, or the long-term debt obligations secured or unsecured by a surety bond, insurance policy or letter of credit of the provider of the Reserve Fund Facility, is reduced below the ratings required by paragraphs (1) and (2) of this subsection (c), the City shall either: (i) replace or cause to be replaced said Reserve Fund Facility with another Reserve Fund Facility that satisfies the requirements set forth in paragraphs (1) and (2) of this subsection (c); or (ii) deposit or cause to be deposited in the Reserve Fund an amount of money or investments that is equal to the value of the Reserve Fund Facility of such provider, such deposits to be made from Net Revenues as money is made available, but in any case within 12 months of the first principal or interest payment date after the reduction in said ratings.

Each Reserve Fund Facility shall be payable (upon the giving of such notice as may be required thereby) on any date on which money is required to be withdrawn from the

Reserve Fund and such withdrawal cannot be made without obtaining payment under such Reserve Fund Facility.

In computing the amount on deposit in the Reserve Fund, a Reserve Fund Facility shall be valued at the amount available to be paid thereunder on the date of computation; provided that, if the unsecured or uncollateralized long-term debt of the provider of such Reserve Fund Facility, or if the long-term debt obligations secured or supported by a surety bond, insurance policy or letter of credit of said provider, has been reduced below the ratings required by paragraphs (1) and (2) of this subsection (c), said Reserve Fund Facility shall be valued at the lesser of: (i) the amount available to be paid thereunder on the date of calculation; and (ii) the difference between the amount available to be paid thereunder on the date of issue thereof and an amount equal to a fraction of such available amount, the numerator of which is the aggregate number of principal and interest payment dates that has elapsed since such ratings were reduced and the denominator of which is two; provided, however, that in no event shall the Reserve Fund Facility be valued at less than \$0.00.

(c) Money in the Reserve Fund may be invested as permitted by law, provided such investments shall be available to pay any deficiencies that may occur in the Debt Service Fund. All interest earned and income derived by virtue of such investments shall be deposited into either the Debt Service Fund or the Reserve Fund, as the Treasurer deems necessary, and be used to meet the required deposits therein. Subject to the other provisions of this paragraph, money in the Debt Service Fund and the Reserve Fund may be combined for the purpose of purchasing investments, provided, the records of the City shall show to which account the respective portions of any such combined investments are credited.

### **Section 3.05 Covenants.**

(a) Maintenance of the System. The City shall at all times maintain, preserve and keep the properties of the System in good repair, working order and condition and will from time to time make all necessary and proper repairs, renewals, replacements, extensions and betterments thereto, so that at all times the business carried on in connection therewith will be properly and advantageously conducted, and the City will at all times operate or cause to be operated said properties of the System and the business in connection therewith in an efficient manner and at a reasonable cost.

(b) Rates and Charges. The City has established, may from time to time revise, and shall maintain and collect from the users of the System, rates and charges for furnishing the services and the facilities of the System to such users thereof. Said rates and charges are, and shall continue to be, uniform as to all persons or properties which are of the same class. The City shall also collect all Assessments, if any, payable into the Debt Service Fund when due. The City shall fix, maintain and collect rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the System, which shall be fair and nondiscriminatory and shall adjust such rates and charges from time to time so that:

(i) the Revenue of the System, together with any Assessment Income collected, will at all times be sufficient: (a) to pay the Costs of Maintenance and Operation; (b) to make any payments required to be made on account of the Parity Bonds, as and when the same

shall become due and payable; (c) to make when due all payments which the City is obligated to make into the Reserve Fund and all other payments which the City is obligated to make pursuant to this Ordinance; and (d) to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the Revenue of the System, or payments in lieu thereof, and any and all other amounts which the City may now or hereafter become obligated to pay from the Revenue of the System by law or contract; and

(ii) the Net Revenue for each calendar year, together with Assessment Income, will equal at least: (a) 1.00 times the Annual Debt Service of that portion of all Parity Bonds then Outstanding that are Assessment Bonds; plus (b) 1.25 times the Annual Debt Service of that portion of all Parity Bonds that are not Assessment Bonds.

(c) Sale of the System. The City will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition provision is made for payment into the Debt Service Fund (or another sinking fund pledged to the payment of the Parity Bonds) of cash or Government Obligations sufficient (taking into account interest to be earned on any such Government Obligations) to pay the principal of and interest on all Parity Bonds then Outstanding, nor will it sell or otherwise dispose of any part of the useful operating properties of the System unless such facilities are replaced or provision is made for payment into the Debt Service Fund (or another sinking fund pledged to the payment of the Parity Bonds) of the greatest of the following:

(i) an amount which will be in the same proportion to the net amount of the Parity Bonds then Outstanding (defined as the total principal amount of Parity Bonds less the amount of cash and investments in the Debt Service Fund and the Reserve Fund) that the revenue from the portion of the System sold or disposed of for the preceding year bears to the total Revenue of the System for such period; or

(ii) an amount which will be in the same proportion to the net amount of Parity Bonds then Outstanding (as defined above) that the Net Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Net Revenue for such period; or

(iii) an amount which will be in the same proportion to the net amount of Parity Bonds then Outstanding (as defined above) that the depreciated-cost value of the facilities sold or disposed of bears to the depreciated-cost value of the entire System immediately prior to such sale or disposition.

The proceeds of any such sale or disposition of a portion of the properties and facilities of the System (to the extent required above) shall be paid into the Debt Service Fund (or such other sinking fund).

Notwithstanding any other provision of this paragraph, the City may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary,

material to or useful in such operation, without making any deposit into the Debt Service Fund (or other sinking fund).

(d) Liens and Encumbrances. The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the System or the Net Revenue, or any part thereof, prior or superior to the lien thereon for the payment of the Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, prior to or superior to the lien of the Parity Bonds, or which might impair the security of the Parity Bonds. Notwithstanding the foregoing, the City may contest in good faith claims for labor, materials and supplies.

(e) Insurance. The City will keep the works, plants and facilities comprising the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents or casualties, at least to the extent that insurance is usually carried by municipal corporations operating like properties, or will implement a self-insurance program with reserves adequate, in the judgment of the Council, to protect the City and the Registered Owners of the Parity Bonds against loss. In the event of any loss or damage, the City will promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the System, the proceeds of such insurance shall be paid into the Debt Service Fund (or another sinking fund pledged to the payment of the Parity Bonds) for the redemption of Parity Bonds.

(f) Books of Account. The City shall keep proper books of account which shall be kept in accordance with any applicable rules, regulations and statutes prescribed by the State of Washington. The City shall prepare, and any Registered Owner of the Bond may obtain copies of, balance sheets and profit and loss statements showing in reasonable detail the financial condition of the System as of the close of each year, and the income and expenses of the System for such year, including the amounts paid into the Revenue Fund, the Debt Service Fund, the Reserve Fund and into any and all special funds or accounts created pursuant to the provisions of this Ordinance, and the amounts expended for maintenance, renewals, replacements and capital additions to the System.

(g) No Free Service. Except to aid the poor or infirm, to provide for resource conservation or to provide for the proper handling of hazardous materials, the City will not furnish or supply or permit the furnishing or supplying of any service or facility furnished by or in connection with the operation of the System, free of charge to any person, firm or corporation, public or private, so long as the Bond is Outstanding and unpaid.

(h) Improvements to the System. The City will not expend any of the Revenue of the System or the proceeds of any indebtedness payable therefrom for any extensions, betterments and improvements to the System that are not legally required or economically sound, and that will not properly and advantageously contribute to the conduct of the business of the System in an efficient manner.

(i) Issuance of Additional Bonds.

(i) *Restriction Against Prior Lien Bonds.* The City hereby covenants and agrees with the Registered Owner of the Bond, for as long as any of the same remain Outstanding, that the City will not issue any bonds having a greater priority of lien upon the Revenue of the System to pay and secure the payment of the principal of and interest on such bonds than the priority of lien created on such Revenue of the System to pay and secure the payment of the principal of and interest on the Parity Bonds. The City shall not issue any bonds having an equal priority of lien upon the Revenue of the System to pay and secure the payment of the principal of and interest on such bonds than the priority of lien created on such revenues to pay and secure the principal of and interest on the Parity Bonds except as provided below.

(ii) *Purposes for Which Additional Bonds May Be Issued.* The City reserves the right to issue Additional Bonds for the purposes of:

(1) providing funds to Acquire, construct, reconstruct, install or replace any equipment, facilities, additions, betterments or other improvements to the System for which it is authorized by law to issue revenue bonds, or

(2) refunding at or prior to their maturity, any revenue bond anticipation notes or outstanding revenue bonds or other obligations payable out of the Revenue of the System.

(iii) *Conditions of Issuing Additional Bonds.* Additional Bonds may be issued only if the following conditions are satisfied:

(1) At the time of the issuance of any Additional Bonds there is no deficiency in the Debt Service Fund or the Reserve Fund.

(2) The principal of and interest on the Additional Bonds shall be payable out of the Debt Service Fund.

(3) If there are Assessments levied in any utility local improvement district to pay for additions and improvements to and extensions of the System that will be constructed from the proceeds of such Additional Bonds, or if there are Assessments pledged to be paid into a warrant or bond redemption fund for revenue bonds or warrants being refunded by Additional Bonds, the ordinance authorizing such Additional Bonds shall: (i) for so long as the USDA Bonds are Outstanding (except as provided in clause (ii) of this sentence), require that such Assessments be paid into the Debt Service Fund; and (ii) at such time as the USDA Bonds are no longer Outstanding (or such time Ordinance Nos. 1700 and 1714 are appropriately amended, if sooner), require that such Assessments be paid into the Debt Service Fund and/or the Reserve Fund.

(4) The City shall provide in the ordinance authorizing the issuance of such Additional Bonds that it will deposit a Reserve Fund Facility into the Reserve Fund or pay into the Reserve Fund out of the Revenue of the System (or, at the option of the City, out of any other funds on hand legally available for such purpose) so that by the date of such Additional Bonds are issued there will have been paid into the Reserve Fund an amount

which, with the money or Reserve Fund Facilities already on deposit therein, will be equal to the Reserve Fund Requirement.

(5) Prior to the delivery of any Additional Bonds, the City shall have on file in the office of the Clerk a certificate of an independent professional engineer or certified public accountant, dated not earlier than 90 days prior to the date of delivery of such Additional Bonds, showing that the Adjusted Net Revenue, together with Assessment Income, will equal at least: (a) 1.00 times the Average Annual Debt Service (as such is calculated to include the Additional Bonds to be issued) of that portion of all Parity Bonds that are Assessment Bonds; plus (b) 1.25 times the Average Annual Debt Service (as such is calculated to include the Additional Bonds to be issued) of that portion of the Parity Bonds that are not Assessment Bonds. Such engineer or accountant shall base his certification upon, and his certificate shall have attached thereto, financial statements of the System that are audited by the State Examiner or by such other person or firm currently authorized by the statutes of the State of Washington to perform such audits (unless such an audit is not available for a 12-month period within the preceding 30 months), and certified by the Treasurer, showing income and expenses for the period upon which the same is based.

(iv) *Subordinate Lien Bonds.* Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations that are a charge upon the Revenue of the System junior or inferior to the payments required by this Ordinance to be made out of such revenue into the Debt Service Fund and the Reserve Fund to pay and secure the payment of the Parity Bonds.

(v) *Refunding Bonds.* The restrictions set forth in Section 3.05(i)(iii)(5) shall not apply in the event the City issues Additional Bonds to refund all or a portion of the Parity Bonds then Outstanding, provided: (A) the annual maturities of the refunding bonds do not extend over a longer period of time than the Parity Bonds being refunded; and (B) the sum of the principal and interest due on each annual maturities of the refunding bonds does not exceed by more than \$5,000 the sum of the principal of and interest on the refunded Parity Bonds that would have otherwise been due on the respective annual maturities. Notwithstanding the foregoing, this subsection 3.05(i) shall not prevent the City from issuing revenue bonds to refund maturing Parity Bonds for the payment of which money is not otherwise available.

### **Section 3.06 Events of Default.**

(a) *Events of Default Defined.* Each of the following shall be an “Event of Default” hereunder:

(i) payment of the principal or redemption price of any Parity Bond is not made when it becomes due and payable at maturity or upon call for redemption; or

(ii) payment of any interest on any Parity Bond is not made when it becomes due and payable; or

(iii) the City fails or refuses to comply with any of its covenants hereunder, other than the timely payment of the principal of, redemption price, or interest on the

Bond (to which no cure period shall apply), and such failure or refusal shall continue for a period of 90 days after written notice thereof has been given to the City by the Registrar.

(b) *No Acceleration.* If an Event of Default shall happen and shall not have been remedied, the Parity Bonds shall not be subject to acceleration of payment, and each installment of principal of and interest on the Parity Bonds shall be payable when due.

(c) *Proceedings Brought by Registered Owners.* If an Event of Default happens and is not remedied, then the Registered Owners of not less than 25 percent in principal amount of Parity Bonds then Outstanding may proceed, by their agents and attorneys, to protect and enforce their rights under this Ordinance forthwith by a suit in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the City as if the City were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the legal representative of the Registered Owners shall deem most effectual to enforce any of their rights, and such Registered Owners may appoint a default trustee (the "Default Trustee") to represent their interests.

All rights of action under this Ordinance may be enforced by any Default Trustee without either the possession of any of the Parity Bonds or the production thereof at the trial or other proceedings, and any such suit or proceedings instituted by the Default Trustee shall be brought in its name.

The Registered Owners of not less than a majority in principal amount of the Parity Bonds then Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to them provided that the Default Trustee shall have the right to decline to follow any such direction if the Default Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken, or if the Default Trustee in good faith shall determine that the action or proceeding so directed would involve the Default Trustee in personal liability or be unjustly prejudicial to the Registered Owners who are not parties to such direction.

The Default Trustee shall have the power to institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Ordinance by any acts that may be unlawful or in violation of this Ordinance, and such suits and proceedings as the Default Trustee may be advised shall be necessary or expedient to preserve or protect the interests of the Registered Owners.

(d) *Restriction on Action of Registered Owners.* Except as otherwise provided above, no Registered Owner shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or for any remedy under this Ordinance, unless such Registered Owner shall have previously given to the City written notice of the happening of an Event of Default, and shall have offered it reasonable opportunity, either to: (1) exercise the powers granted in this Ordinance or by the laws of the State of Washington; or (2) institute such action, suit or proceeding in its own name, it being understood and intended that no one or more Registered Owners shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this Ordinance, or to enforce any

right under this Ordinance, except in the manner herein provided; and that all proceedings at law or in equity to enforce any provision of this Ordinance shall be instituted, had and maintained in the manner provided in this Ordinance and for the equal benefit of all Registered Owners.

Nothing in this Ordinance or the Bond shall affect or impair the obligation of the City, which is absolute and unconditional, to pay from the sources provided in this Ordinance at the respective dates of maturity and places therein expressed the principal of, premium, if any, and interest on the Bond to the respective Registered Owners thereof, or affect or impair the right of action, which is also absolute and unconditional, of any Registered Owner to enforce such payment of the Bond.

(e) *Remedies Not Exclusive.* No remedy herein conferred is intended to be exclusive of any other remedy or remedies, and each remedy is in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

(f) *Delays and Omissions Not to Impair Rights.* No delays or omissions in respect of exercising any right or power accruing upon any default shall impair such right or power or be a waiver of such default, and every remedy given by this Section 3.06 may be exercised from time to time and as often as may be deemed expedient.

#### **ARTICLE IV. MISCELLANEOUS PROVISIONS**

##### **Section 4.01 Amendments to Ordinance.**

(a) *Adoption of Supplemental Ordinance.* The Council may adopt an ordinance supplemental hereto, which ordinance thereafter shall become a part of this Ordinance, for any one or more of all of the following purposes: (1) to add to or delete from the covenants and agreements of the City in this Ordinance, provided such additions or deletions shall not adversely affect, in any material respect, the interests of the Registered Owner of the Bond; or (2) to cure, correct or supplement any ambiguous or defective provision contained in this Ordinance, provided such supplemental ordinance shall not adversely affect, in any material respect, the interests of the Registered Owner of the Bond. Any such supplemental ordinance may be adopted without the consent of the Registered Owner of the Bond, notwithstanding any of the provisions of Section 4.01(b).

(b) *Amendments With Consent of the Registered Owner.* With the consent of the Registered Owner of the Bond, the Council may adopt an ordinance supplemental hereto for the purpose of adding any provisions to, or changing in any manner, or eliminating any of the provisions of this Ordinance. It shall not be necessary for the consent of Registered Owner under this subsection to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

(c) *Effect of Amendments.* Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section 4.01, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this Ordinance and the Registered Owner of the Bond shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments,

and all terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

(d) *Notations; Replacement Bonds.* Bonds executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this Section 4.01 may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new Bonds so modified as to conform in the opinion of the Council to any modification of this Ordinance contained in any such supplemental ordinance, may be prepared and delivered without cost to the Registered Owner of the Bond, upon surrender for cancellation of such Bond.

**Section 4.02 General Authorization; Ratification; and Limitation on Recourse.**

The Mayor, the Clerk and the Treasurer are each authorized to take any actions and to execute documents as in their judgment may be necessary or desirable to carry out the terms of, and complete the transactions contemplated by, this Ordinance and the Bond Purchase Agreement (including everything necessary for the prompt delivery of the Bond to the Purchaser and the proper application and use of the proceeds of the sale thereof). All actions heretofore taken in furtherance thereof and not inconsistent with the provisions of this Ordinance are hereby ratified and confirmed in all respects. No recourse shall be had for any claim based on this Ordinance or the Bond against any Council member, officer or employee, past, present or future, of the City or of any successor body as such, either directly or through the City or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

**Section 4.03 Severability.** If any provision of this Ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bond.

**Section 4.04 Effective Date.** This Ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law. The Clerk is directed to cause this Ordinance, or a summary hereof, to be published in the official newspaper of the City.

PASSED by the City Council of the City of Dayton, Washington, at a regular open public meeting thereof held on May 8, 2017.

CITY OF DAYTON, WASHINGTON

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Craig George, Mayor

ATTESTED:

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Trina Cole, City Clerk

(S E A L)

## CERTIFICATION

I, Trina Cole, the City Clerk of the City of Dayton, Washington (the “City”), hereby certify as follows:

1. The foregoing Ordinance No. \_\_\_\_ (the “Ordinance”) is a full, true and correct copy of the Ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on May 8, 2017, as that Ordinance appears on the minute book of the City; and the Ordinance is in full force and effect; and the Ordinance will be in full force and effect five days after the publication of its summary in the City’s official newspaper; and

2. A quorum was present throughout the meeting and a sufficient number of members of the City Council voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 8<sup>th</sup> day of May, 2017.

CITY OF DAYTON, WASHINGTON

\_\_\_\_\_  
Trina Cole, City Clerk

(S E A L)

## ATTACHMENT A

### Parameters For Final Terms

- (a) Principal Amount. The Bond may be issued in the principal amount of not to exceed \$1,100,000.
- (b) Date. The Bond shall be dated its Issue Date, which date shall occur on or before December 31, 2017.
- (c) Interest Rate. The Bond shall bear interest at a fixed rate *per annum* from the Issue Date of the Bond or from the most recent interest payment date for which interest has been paid or duly provided for, whichever is later; provided that the rate of interest for the Bond shall not exceed 4.25%. The Bond Purchase Agreement shall specify whether interest shall be computed using the 30/360, actual/360 or actual/actual convention.
- (d) Debt Service Schedule. The Designated Representative is authorized to select the timing and manner of debt service payments on the Bond, which shall be set forth in a Bond Purchase Agreement; provided, regularly scheduled debt service payment dates shall only occur on June 1 and/or December 1.
- (e) Maturity Date. December 1, 2031.
- (f) Redemption Rights. The Designated Representative may approve in a Bond Purchase Agreement provisions for redemption of the Bond prior to the Maturity Date.
- (g) Price. The purchase price for the Bond shall be not less than 95% nor more than 105% of the stated principal amount.
- (h) Bond Sale Proceeds. The Designated Representative shall determine the amounts of Bond sale proceeds received from the Purchaser to be (1) deposited into the Revenue Fund, (2) deposited into the Debt Service Fund, (3) retained by the Purchaser as a fee and reimbursement of expenses, and/or (4) paid directly to third parties as Bond issuance costs.
- (i) Other Terms and Conditions. The Designated Representative is authorized to take such additional action as may be necessary or convenient for the issuance of the Bond pursuant to the terms of this Ordinance.

## ATTACHMENT B

### City of Dayton, Washington Post-Issuance Compliance Policies and Procedures for Tax-Exempt Obligations

1. **Purpose.** The purpose of these post-issuance compliance procedures (“Compliance Procedures”) is to ensure that the City of Dayton, Washington (the “City”) will be in compliance with: (i) requirements of the Internal Revenue Code of 1986, as amended (the “Code”), that must be satisfied to maintain the tax-exempt status of bonds or other obligations issued by the City that are exempt from federal income tax under the Code (sometimes collectively referred to herein as “bonds” or “tax-exempt bonds”) and (ii) each Continuing Disclosure Undertaking (described in Section 8 below).

2. **Responsibility for Monitoring Post-Issuance Tax Compliance.** The City Council of the City (the “Council”) has the overall, final responsibility for monitoring whether the City is in compliance with post-issuance federal tax requirements for the City’s tax-exempt bonds. However, the City Treasurer (the “Treasurer”) shall have the primary operating responsibility to monitor the City’s compliance with post-issuance federal tax requirements for the City’s bonds. In addition to any compliance checks that may be undertaken in connection with (and prior to) any prospective change in use of property or facilities financed with tax-exempt bonds as described in Section 4 below, the Treasurer will check on the City’s compliance with applicable requirements of the Code and the Continuing Disclosure Undertaking (defined below) at least annually.

3 **Arbitrage Yield Restriction and Rebate Requirements.** The Treasurer shall maintain or cause to be maintained records of:

(a) purchases and sales of investments made with bond proceeds (including amounts treated as “gross proceeds” of bonds under section 148 of the Code) and receipts of earnings on those investments;

(b) expenditures made with bond proceeds (including investment earnings on bond proceeds) in a timely and diligent manner for the governmental purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities;

(c) information showing, where applicable for a particular calendar year, that the City was eligible to be treated as a “small issuer” in respect of bonds issued in that calendar year because the City did not reasonably expect to issue more than \$5,000,000 of tax-exempt bonds in that calendar year;

(d) calculations that will be sufficient to demonstrate to the Internal Revenue Service (“IRS”) upon an audit of a bond issue that, where applicable, the City has complied with an available spending exception to the arbitrage rebate requirement in respect of that bond issue;

(e) calculations that will be sufficient to demonstrate to the IRS upon an audit of a bond issue for which no exception to the arbitrage rebate requirement was applicable, that the

rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS; and

(f) information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

4. **Restrictions on Private Business Use and Private Loans.** The Treasurer shall adopt other procedures that are calculated to educate and inform the principal operating officials of those departments, including capital projects and facility departments, if any, of the City (the “users”) for which land, buildings, facilities and equipment (“property”) are financed with proceeds of tax-exempt bonds about the restrictions on private business use that apply to that property after the bonds have been issued, and of the restriction on the use of proceeds of tax-exempt bonds to make or finance any loan to any person other than a state or local government unit.

In particular, following the issuance of bonds for the financing of property, the Treasurer shall provide to the users of the property a copy of these Compliance Procedures and other appropriate written guidance advising that:

(a) “private business use” means use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain “qualified” management or service contracts), output contract for the purchase of electricity or water, privately sponsored research contract (except for certain “qualified” research contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property;

(b) under section 141 of the Code, no more than 10% of the proceeds of any tax-exempt bond issue (including the property financed with the bonds) may be used for private business use, of which no more than 5% of the proceeds of the tax-exempt bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use—that is, generally, a private business use that is not functionally related to the governmental purposes of the bonds; and no more than the lesser of \$5,000,000 or 5% of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local government unit;

(c) before entering into any special use arrangement with a nongovernmental person that involves the use of bond-financed property, the user must consult with the Treasurer, provide the Treasurer with a description of the proposed nongovernmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property;

(d) in connection with the evaluation of any proposed nongovernmental use arrangement, the Treasurer should consult with nationally recognized bond counsel to the City as may be necessary to obtain federal tax advice on whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any “remedial action” permitted under Section 141 of the Code may be taken by the City as a means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the bonds that financed the property; and

(e) the Treasurer and the user of the property shall maintain records of such nongovernmental uses, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-exempt status of the bonds that financed the property.

**5. Records to be Maintained for Tax-Exempt Bonds.** It is the procedure of the City that, unless otherwise permitted by future IRS regulations or other guidance, written records (which may be in electronic form) will be maintained with respect to each bond issue for as long as those bonds remain outstanding, plus three years. For this purpose, the bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records to be maintained are to include:

- (a) the official Transcript of Proceedings for the original issuance of the bonds;
- (b) records showing how the bond proceeds were invested, as described in 3(a) above;
- (c) records showing how the bond proceeds were spent, as described in 3(b) above, including purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and records of “allocations” of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued;
- (d) information, records and calculations showing that, with respect to each bond issue, the City was eligible for the “small issuer” exception or one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS, as described in 3(c), (d) and (e) above; and
- (e) records showing that special use arrangements, if any, affecting bond-financed property made by the City with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of property financed with proceeds of tax-exempt bonds and restrictions on the use of proceeds of tax-exempt bonds to make or finance loans to any person other than a state or local government unit, as described in 4 above.

The basic purpose of the foregoing record retention procedure for the City’s tax-exempt bonds is to enable the City to readily demonstrate to the IRS upon an audit of any tax-exempt

bond issue that the City has fully complied with all federal tax requirements that must be satisfied after the issue date of the bonds so that those bonds continue to be eligible for tax exemption under the Code.

**6. Identification and Remediation of Potential Violations of Federal Tax Requirements for Tax-Exempt Bonds.**

(a) So long as any of the City's tax-exempt bond issues remain outstanding, the Treasurer should periodically consult with the users of the City's bond-financed property to review and determine whether current use arrangements involving that property continue to comply with applicable federal tax requirements as described in these Compliance Procedures. This may be accomplished, for example, by periodically meeting with users, providing questionnaires to users about current use arrangements, or adopting other protocols reasonably calculated to ensure compliance with applicable federal tax requirements on a continuing basis. This periodic review may be scheduled, for example, at or before the times that the City is required to file with the Municipal Securities Rulemaking Board the annual financial information and operating data pursuant to the City's undertaking to provide continuing disclosure with respect to outstanding bonds.

(b) If at any time during the life of an issue of tax-exempt bonds, the City discovers that a violation of federal tax requirements applicable to that issue may have occurred, the Treasurer will consult with bond counsel to determine whether any such violation actually has occurred and, if so, take prompt action to accomplish an available remedial action under applicable IRS regulations or to enter into a closing agreement with the IRS under the Voluntary Closing Agreement Program described under Notice 2008-31 or other future published guidance.

**7. Education Procedure With Respect to Federal Tax Requirements for Tax-Exempt Bonds.** It is the procedure of the City that the Treasurer and his or her staff, as well as the principal operating officials of those departments of the City for which property is financed with proceeds of tax-exempt bonds should be provided with education and training on federal tax requirements applicable to tax-exempt bonds. The City recognizes that such education and training is vital as a means of helping to ensure that the City remains in compliance with those federal tax requirements in respect of its bonds. The City therefore will enable and encourage, to the extent the City can afford to do so, those personnel to attend and participate in educational and training programs with regard to the federal tax requirements applicable to tax-exempt bonds.

**8. Responsibility for Continuing Disclosure Undertaking.** Under the provisions of Securities and Exchange Commission Rule 15c2-12 ("Rule 15c2-12"), underwriters are required to obtain an agreement for ongoing continuing disclosure in connection with the public offering of municipal securities. The City's responsibility to provide ongoing continuing disclosure to the municipal securities markets is set forth in the bond ordinance or in a separate continuing disclosure agreement for each publicly sold issue of bonds (the "Continuing Disclosure Undertaking"). Each Continuing Disclosure Undertaking requires the City to provide to the municipal securities markets certain annual financial information and notices of certain listed events. For some types of listed events (e.g., bond calls), the Bond Registrar has undertaken the responsibility of filing notice of the applicable listed event. If audited financial

statements are not available by the time of each annual filing, the City shall file unaudited financial statements and file audited financial statements once they become available. For example, the annual filing of operating and financial information may be scheduled to occur at the same time financial information is provided to the State auditor's office, if such time is before the annual deadline described in the Continuing Disclosure Undertaking. The Treasurer shall monitor compliance by the City with each Continuing Disclosure Undertaking, shall maintain a file that includes a copy of each Continuing Disclosure Undertaking entered into by the City, shall ensure that the information required to be disclosed is disclosed in a timely fashion and shall cause any failure to make disclosure to be remedied in a timely fashion.

ORDINANCE SUMMARY BY TITLE ONLY FOR PUBLICATION PURPOSES  
ORDINANCE NO. 1911

AN ORDINANCE of the City of Dayton, Washington, relating to the water and sewer system of the City; providing for the issuance of a water and sewer revenue bond of the City in the principal amount of not to exceed \$1,100,000, for the purpose of providing funds to pay the cost of the acquisition, construction and installation of improvements to the City's water and sewer system; fixing the date, form, maturity, interest rate, terms and covenants of the bond; providing for the registration and authentication of the bond; creating and adopting certain funds and accounts; providing for the issuance of additional bonds; appointing the City's designated representative pursuant to RCW 39.46.040(2) to approve the final terms of the issuance, sale and delivery of the bond; and providing for other matters properly related thereto, all as more particularly set forth herein.

ARTICLE I. GENERAL PROVISIONS

Section 1.01 Findings

Section 1.02 Definitions

ARTICLE II. PROVISIONS PARTICULAR TO THE BOND

Section 2.01 Authorization of the Bond

Section 2.02 Description of the Bond.

Section 2.03 Authority to Approve Bond Purchase Agreement.

Section 2.04 Form and Execution of the Bond

Section 2.05 Registrar, Registration and Transfer of Bond

Section 2.06 Payment of the Bond

Section 2.07 Prepayment and Redemption Provisions.

Section 2.08 Refunding or Defeasance of the Bond

Section 2.09 Pledge of Revenue and Lien Position

Section 2.10 Preservation of Tax Exemption for Interest on the Bond

Section 2.11 Designation of Bond as a "Qualified Tax-Exempt Obligation"

Section 2.12 Compliance Policies

ARTICLE III. PROVISIONS GOVERNING ALL PARITY BONDS

Section 3.01 Application of Revenue of the System

Section 3.02 The Revenue Fund

Section 3.03 The Debt Service Fund

Section 3.04 The Reserve Fund

Section 3.05 Covenants

Section 3.06 Events of Default

ARTICLE IV. MISCELLANEOUS PROVISIONS

Section 4.01 Amendments to Ordinance

Section 4.02 General Authorization; Ratification; and Limitation on Recourse

Section 4.03 Severability

Section 4.04 Effective Date

The full text of Ordinance 1910 adopted the 8<sup>th</sup> day of May, 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.

By: /s/ Craig George, Mayor

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

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

Published: 05/18/2017

Dayton Chronicle

## TASK ORDER

### CITY OF DAYTON 2017 STREET IMPROVEMENTS PLAN Engineering Services

This Task Order shall be attached to and become a permanent part of the Agreement for Engineering Services entered into by and between the City of Dayton (CITY) and Anderson Perry & Associates, Inc. (ENGINEER) on March 14, 2016.

#### SCOPE OF WORK

The scope of work for this Task Order consists of planning and preparing conceptual cost estimates for several street improvement projects within the City of Dayton. Specific tasks are defined and addressed below.

#### ENGINEERING SERVICES

- 1. North Hill Street Improvements** – Whitman Avenue and Columbia Avenue between Front Street and Willow Street, and Front Street between Whitman Avenue and Columbia Avenue are currently unmaintained, unpaved streets. The ENGINEER will provide a memorandum evaluating potential design concepts and conceptual cost estimates for improving these streets.
- 2. Washington Avenue Improvements** – Washington Avenue from 4th Street to the Main Street (Highway 12) viaduct is an existing paved street used for residential access and access to Seneca Foods. The existing pavement has deteriorated to an unserviceable condition, and the street has been closed to through traffic. The ENGINEER will provide a memorandum evaluating potential design concepts and conceptual cost estimates for improving this street.
- 3. Chip Seal Improvements** – The CITY desires to chip seal the following streets:
  - 4th Street: Main Street to City Limits (±1.4 miles)
  - 3rd Street: Main Street to School Bus Street (±0.5 mile)
  - 2nd Street: Park Street to School Bus Street (±0.2 mile)

The ENGINEER will provide a memorandum evaluating potential design concepts, means of construction (Contractor, County, etc.), and conceptual cost estimates for improving these streets. The ENGINEER will attend one CITY council meeting to present the estimated concepts.

#### COMPENSATION

The CITY will compensate the ENGINEER for performing the services outlined in this Task Order on a time and materials basis, plus direct reimbursable expenses not to exceed \$6,000 pursuant to the ENGINEER's current Hourly Fee Schedule.

This Task Order is executed on the date shown below.

CITY:	<u>City of Dayton</u>	ENGINEER:	<u>Anderson Perry &amp; Associates, Inc.</u>
By:	_____	By:	_____
Name:	<u>Craig George</u>	Name:	<u>Jake Hollopeter, P.E.</u>
Title:	<u>Mayor</u>	Title:	<u>Vice President</u>
Date:	_____	Date:	_____

**NOTICE OF AWARD**

Dated **May 4, 2017**

TO: **Moreno & Nelson Construction Corporation**  
ADDRESS: **PO Box 794**  
**Walla Walla, Washington 99362**

Project/Contract: **City of Dayton – West Main Street (SR 12) Sidewalk Project**

---

You are notified that your Bid dated May 3, 2017 for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a Contract for the City of Dayton's West Main Street (SR 12) Sidewalk Project.

The Contract Price of your Contract is:

**Two hundred forty-six thousand ninety-eight and 00/100 ----- dollars (\$246,098.00).**

You must comply with the following conditions within 15 days of the date you receive this Notice of Award.

**1. Notice of Award**

Acknowledge acceptance of the project award in the space provided on this Notice of Award form. Be sure to include the date, as well as the signature and title of the person signing the award form. ***Return all three copies to the Engineer.***

**2. Agreement between Owner and Contractor**

Date and sign all **three** copies of the attached Agreement form. ***Return all three copies to the Engineer.***

**3. Performance and Payment Bonds**

Provide the Construction Performance and Payment Bonds. Enclosed are **three** copies of the Performance Bond and **three** copies of the Payment Bond forms. Include an appropriate Power of Attorney that is properly dated with each of the bonds. **Additionally, note that the date shown on the Performance and Payment Bonds must be on or after the date shown on the Agreement.** The date on the Power of Attorney should be the same as shown on the Bonds. These Performance and Payment Bond forms must be used, and no others will be accepted. ***Return three completed copies to the Engineer.***

**4. Certificate of Insurance**

Provide **three** copies of an ACORD Certificate of Insurance. The form and insurance limits shall meet the requirements of Section 1-07.18 of the Standard Specifications as modified in the contract special provisions. The contracting agency and its offices, elected officials, employees, agents, and volunteers shall be added as an additional insured on the ACORD Certificate of Insurance. Be sure to include Worker's Compensation certificates. ***Return all three copies to the Engineer.***

Failure to comply with these conditions within the time specified will entitle the Owner to consider your Bid in default, to annul this Notice of Award, and to declare your Bid security forfeited.

City of Dayton \_\_\_\_\_

(OWNER)

By: Adam Schmidtgall  
(AUTHORIZED SIGNATURE)

Adam Schmidtgall, PE with Anderson Perry &  
Associates, Inc., on behalf of the City of Dayton  
(NAME)

Project Engineer  
(TITLE)

---

### ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged by **Moreno & Nelson Construction Corporation** this the day of \_\_\_\_\_, 2017.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR**

**THIS AGREEMENT** is by and between the **City of Dayton, Washington** (hereinafter called Owner) and **Moreno & Nelson Construction Corporation** (hereinafter called Contractor) for the **West Main Street (SR 12) Sidewalk Project**.

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**1. WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: constructing approximately 1,900 feet of cement concrete sidewalks and driveways, 11 Americans with Disabilities Act ramps, and other related improvements.

**2. (RESERVED)**

**3. ENGINEER**

3.01 The Project has been designed by **Anderson Perry & Associates, Inc.** who is hereinafter called Engineer and who is to act as Owner's representative and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. The Engineer's address is 214 East Birch Street, P.O. Box 1687, Walla Walla, Washington 99362; telephone (509) 529-9260, and fax (509) 529-8102.

**4. CONTRACT TIMES**

4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, Physical Completion, and Completion and readiness for final payment and final acceptance as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed as outlined in the Contract Documents

4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss and other adverse consequences described in Section 1-08.9 of the Standard Specifications if the Work is not completed within the time(s) specified plus any extensions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for

delay (but not as a penalty), Contractor shall pay Owner in accordance with the formula in Section 1-08.9 of the Standard Specifications for each day that expires after the time established for Physical Completion until the Work is physically complete.

- B. It is further agreed that, in case the work called for under the contract is not completed in all parts and requirements within the contract time specified in the contract, the Owner, as an alternative to assessing liquidated damages, shall have the option to increase the contract time or not, as the Owner decides will best serve its interest. If the Owner decides to increase said contract time, the Owner shall further have the right to charge the Contractor, his/her heirs, assigns, or sureties, and to deduct from the final payment for the work, all or any part, as the Owner may deem proper, of the actual cost of engineering, lost revenue, interest cost, inspection, superintendence, Owner's direct cost, and other overhead expenses which are directly chargeable to the contract and which accrue during the period of such extension, except that the cost of final surveys and preparation of the final estimate shall not be included in such charges. Permitting the Contractor to continue and finish the work or any part thereof after the contract time or adjusted contract time has expired shall in no way be construed as a waiver on the part of the Owner or any of his/her rights under the contract.

## **5. CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amount(s) contained in the Contractor's Bid Form, which shall become an attachment to the Contract Documents.

## **6. PAYMENT PROCEDURES**

### 6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment. Applications for Payment will be processed by Engineer and forwarded to the Owner.

### 6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as outlined in Section 1-09 of the Standard Specifications.

### 6.03 Final Payment

- A. Upon Completion and final acceptance of the Work in accordance with the Standard Specifications, the Owner shall pay the remainder of the Contract Price minus retainage. Release of retainage shall be in conformance with Section 1-09 of the Standard Specifications.

## **7. (RESERVED)**

## 8. CONTRACTOR'S REPRESENTATIONS

- 8.01 To induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has become familiar with the site and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except underground facilities) that have been identified in the Special Provisions.
  - E. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.
  - F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
  - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
  - I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  - J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## 9. CONTRACT DOCUMENTS

### 9.01 Contents

A. The Contract Documents consist of the following:

1. Bidding Requirements
  - a. Advertisement for Bids
  - b. Instructions to Bidders
  - c. Bidders Packet (bound separately)
2. Contract Forms
  - a. Notice of Award
  - b. Agreement
  - c. Performance Bond
  - d. Payment Bond
  - e. Certificate of Insurance
  - f. Notice to Proceed
  - g. Other forms included in the Contract Documents
3. Conditions of the Contract
  - a. Reference to the Standard Specifications
  - b. Amendments to the Standard Specifications
  - c. Special Provisions
  - d. Wage Requirements
4. Appendices
  - a. Appendix A - City of Dayton Material Specifications and Construction Requirements
  - b. Appendix B - City of Dayton Standard Plans
  - c. Appendix C - WSDOT Traffic Control Plans TC1 and TC5
5. Drawings (consisting of a cover sheet and sheets numbered 1 through 11, inclusive) (bound separately)
6. Addenda (numbers 1 and 2, inclusive)
7. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Written Amendments
  - b. Change Order(s)

- B. The documents listed in paragraph 9.01.A are a part of the Contract Documents which are attached (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in Section 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Standard Specifications, Amendments, or Special Provisions.

## **10. MISCELLANEOUS**

### 10.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in the Contract Documents.

### 10.02 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.03 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.04 Waiver

- A. The terms of this Contract shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument. Such waiver, alteration, modification, supplementation, or amendment, if made, shall be effective only in the specific instance and for the specific purpose given, and shall be valid and binding only if it is signed by all parties to this Contract. The failure of the Owner to enforce any provision of this contract shall not constitute a waiver by the Owner of that or any other provision.

### 10.05 Governing Law and Venue

- A. This Contract shall be governed by and construed in accordance with the laws of the State of Washington. Any litigation between the Owner and the Contractor arising out of or related to this Contract shall be brought and maintained solely and exclusively in the District or Superior Court of Columbia County, Washington. Provided, if any litigation arising under this Contract must be brought in a federal forum, it shall be brought and maintained solely and exclusively in the United States District Court for the Eastern District of Washington in Richland, Washington. Contractor hereby consents to

the personal jurisdiction of all courts within the State of Washington. Should any litigation be brought to enforce the terms of this Contract, the prevailing party shall be entitled to reasonable attorney fees, costs, and disbursements at trial and upon appeal. Should any dispute over the terms and conditions of this contract result in mediation or arbitration, any attorney's fees and costs incurred in such mediation or arbitration shall be paid by the party incurring such fees and costs.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor and Engineer. All portions of the Contract Documents have been signed, initialed or identified by Owner and Contractor or identified by Engineer on their behalf.

This Agreement will be effective on May \_\_\_\_, 2017 (which is the Effective Date of the Agreement).

**OWNER: City of Dayton, Washington**

**CONTRACTOR: Moreno & Nelson Construction Corporation**

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

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

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

License No. \_\_\_\_\_  
(Where applicable)

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

## PERFORMANCE BOND

CONTRACTOR *(name and address):*

**Moreno & Nelson Construction Corporation**  
**PO Box 794**  
**Walla Walla, WA 99362**

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

**City of Dayton**  
**111 South 1st Street**  
**Dayton, WA 99328**

### CONSTRUCTION CONTRACT

Effective Date of the Agreement: \_\_\_\_\_, 2017

Amount: **\$246,098.00**

Description *(name and location):* **West Main Street (SR 12) Sidewalk Project**  
**Dayton, Washington**

### BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form:  None  See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

### CONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
*(seal)*

Contractor's Name and Corporate Seal

\_\_\_\_\_  
*(seal)*

Surety's Name and Corporate Seal

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

By: \_\_\_\_\_  
Signature *(attach power of attorney)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.**

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence,

to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### 14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims

for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

**PAYMENT BOND**

CONTRACTOR *(name and address)*:  
**Moreno & Nelson Construction Corporation**  
**PO Box 794**  
**Walla Walla, WA 99362**

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:  
**City of Dayton**  
**111 South 1st Street**  
**Dayton, WA 99328**

**CONSTRUCTION CONTRACT**

Effective Date of the Agreement: \_\_\_\_\_, 2017  
 Amount: **\$246,098.00**  
 Description *(name and location)*: **West Main Street (SR 12) Sidewalk Project**  
**Dayton, Washington**

**BOND**

Bond Number:  
 Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:  
 Amount:  
 Modifications to this Bond Form:  None  See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

\_\_\_\_\_  
*(seal)*  
 Contractor's Name and Corporate Seal

\_\_\_\_\_  
*(seal)*  
 Surety's Name and Corporate Seal

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

By: \_\_\_\_\_  
 Signature *(attach power of attorney)*

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

Attest: \_\_\_\_\_  
 Signature

Attest: \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

**Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.**

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
  - 5.1 Claimants who do not have a direct contract with the Contractor,
    - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2 Pay or arrange for payment of any undisputed amounts.
  - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **Definitions**
  - 16.1 **Claim:** A written statement by the Claimant including at a minimum:
    1. The name of the Claimant;
    2. The name of the person for whom the labor was done, or materials or equipment furnished;
    3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
    4. A brief description of the labor, materials, or equipment furnished;
    5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
    6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
    7. The total amount of previous payments received by the Claimant; and
  - 16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
  - 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
  - 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
  - 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:

## REPORT TO THE CITY COUNCIL

**DATE:** 05/04/2017  
**TO:** City Council Preliminary Agenda Packet for 05/08/2017  
**FROM:** Trina Cole, City Clerk-Treasurer

**RE:** Agenda Item No. 7 (B)

**QUESTION:** Shall the City Council authorize Ordinance No. 1912 amending the 2017 Budget?

**BACKGROUND/DISCUSSION:** In March 2017, Mayor George applied for safety grant through the Association of Washington Cities to purchase a cement grinder. The primary purpose of the grinder will be to reduce sidewalk hazards by grinding down lifted sections of sidewalk throughout our community. AWC awarded the City with a grant not to exceed \$5,000. It will be deposited into the City's Capital Improvements Fund and purchased thereafter.

In addition, the budget reflects 2016 Ending/2017 Beginning Fund Balances. The following summarizes the resources/appropriations of the Fund Balances moving forward into 2017:

- Cemetery – \$17,189 will be transferred to the Current Expense Fund (CE) to be held as reserves for cemetery maintenance purposes. The Cemetery Fund will be closed.
- Historic Pathway - \$210 will be transferred Current Expense Fund to be used towards parks. This Fund will be closed.
- Library – The balance in the Library Fund originated as a transfer from the CE to subsidize the operation of the Dayton Memorial Library. The City has not owned the Dayton Memorial Library for several years. The \$1,131 will be transferred back to CE and held in Ending Fund Balance Reserves for general use in CE. This Fund will be closed.
- CE Cumulative Reserve – This fund was replaced by Fund 301 – Capital Improvements Fund (CIF). The \$556 will be transferred to CIF. It will be designated for 2017 street improvement projects. This Fund will be closed
- Motel/Hotel Excise Tax - \$9,247 was carried over from 2016 and will be used towards the Chamber's tourism and promotion program.
- Sewer Revenue - \$171,000 was budgeted for transfers in 2016 to the Sewer Cumulative Reserve Fund and Debt Service Fund. I failed to prepare the appropriate resolutions and as a result the transfers did not occur in 2016. However, a resolution will be prepared and will be considered by the Council at the May 24, 2017 meeting to transfer the money accordingly.
- Water Revenue – \$ (1,906) will be deducted from the 2017 Ending Fund Balance Reserves.
- Solid Waste Disposal - \$353 will be transferred to CE and be held in Ending Fund Balance Reserves. This Fund will be closed.
- Equipment Replacement - \$36,280 will be transferred to CIF and will be held in 2017 Ending Fund Balance Reserves for equipment (rolling stock) replacement. This Fund will be closed.
- W/S Systems Loan Replacement - \$354 will be transferred to W & S Debt Service to repay outstanding water and sewer revenue bonds. This Fund will be closed.
- Cemetery Endowment - \$ (9,555) will be deducted from the 2017 Ending Fund Balance Reserves.

If Ordinance No. 1912 is approved, a resolution or series of resolutions will be placed on future City Council agendas as Consent items.

**ALTERNATIVES:**

1. Reject the proposed Ordinance.
2. Authorize Ordinance No. 1912.
3. Take no action.

**RECOMMENDED ACTION:**

1. **MOVE TO** authorize Ordinance No. 1912 as presented.

**ORDINANCE NO. 1912**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, AMENDING THE CITY OF DAYTON 2017 BUDGET, ADOPTED BY ORDINANCE NO. 1907 ON DECEMBER 5, 2016, AND SUBSEQUENTLY AMENDED BY ORDINANCE NO. 1909 ON MARCH 16, 2017.**

**WHEREAS**, the City of Dayton adopted the 2017 budget ("Budget") in final form by Ordinance No. 1907 on the 5<sup>th</sup> day of December, 2016; and

**WHEREAS**, the Budget was subsequently amended on March 16, 2017 by Ordinance No. 1909; and

**WHEREAS**, it has become necessary to amend the Budget's Capital Improvements Fund to account for an Association of Washington Cities Safety Grant for the purchase of sidewalk maintenance equipment; and,

**WHEREAS**, it is necessary to amend the Budget to account for 2017 Beginning Fund Balances.

**NOW THEREFORE**, the City Council of the City of Dayton, Washington do hereby ordain as follows:

**SECTION 1. AMEND.** The City of Dayton 2017 Budget is hereby amended to change revenues and appropriations as set forth below:

<b>FUND</b>	<b>2017 BUDGET RESOURCES/ APPROPRIATIONS ADOPTED 12/05/2016, AMENDED 03/16/2017</b>	<b>INCREASE/ (DECREASE)</b>	<b>2017 BUDGET RESOURCES/ APPROPRIATIONS AS AMENDED 05/08/2017</b>
CURRENT EXPENSE	\$ 1,121,400	\$ -	\$1,121,400
CEMETERY	\$ -	\$ 17,879	\$ 17,879
HISTORIC PATHWAY	\$ -	\$ 210	\$ 210
CITY STREET & ROAD	\$ 337,500	\$ -	\$ 337,500
LIBRARY	\$ -	\$ 1,131	\$ 1,131
CE CUMULATIVE RESERVE	\$ -	\$ 556	\$ 556
MOTEL/HOTEL EXCISE TAX	\$ 52,500	\$ 9,247	\$ 61,747
CAPITAL IMPROVEMENTS	\$ 1,317,300	\$ 5,000	\$1,322,300
SEWER REVENUE	\$ 1,005,700	\$171,000	\$1,176,700
SEWER CUMULATIVE RESERVE	\$ 550,400	\$ -	\$ 550,400
WATER REVENUE	\$ 995,900	\$ (1,906)	\$ 993,994
WATER CUMULATIVE RESERVE	\$ 695,800	\$ -	\$ 695,800
SOLID WASTE DISPOSAL	\$ -	\$ 353	\$ 353
W & S SYSTEM DEBT RESERVE	\$ 398,100	\$ -	\$ 398,100
W & S SYSTEM DEBT SERVICE	\$ 641,800	\$ -	\$ 641,800
W/S SYSTEMS LOAN REPAYMENT	\$ -	\$ 354	\$ 354
EQUIPMENT REPLACEMENT FUND	\$ -	\$ 36,280	\$ 36,280
CEMETERY ENDOWMENT	\$ 404,000	\$ (9,555)	\$ 394,445
LIBRARY ENDOWMENT	\$ 168,900	\$ -	\$ 168,900
PATHWAY ENDOWMENT	\$ 9,000	\$ -	\$ 9,000
<b>TOTAL 2017 BUDGET</b>	<b>\$ 7,698,300</b>	<b>\$230,549</b>	<b>\$7,928,849</b>

**SECTION 2. ADOPT.** The budget for fiscal year 2017 is amended to provide for the changes as outlined above, and is hereby adopted, ratified and confirmed.

**SECTION 3. EFFECTIVE DATE.** A summary thereof of this Ordinance consisting of its title shall be published in the official newspaper of the City of Dayton, and shall take effect and be in full force five (5) days after the date of publication.

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

City of Dayton

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

Attested By:

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

Approved as to form:  
Menke Jackson Berry, LLP

\_\_\_\_\_  
By: Quinn Plant, City Attorney

ORDINANCE SUMMARY BY TITLE ONLY FOR PUBLICATION PURPOSES  
**ORDINANCE NO. 1912**

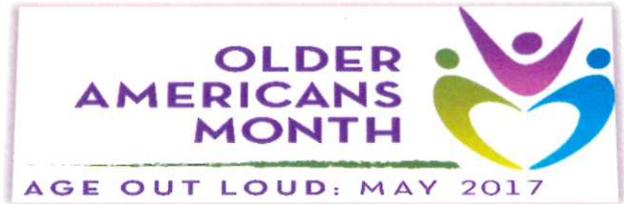
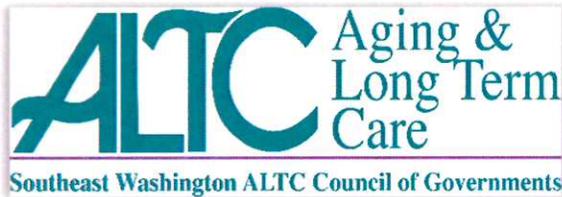
**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
DAYTON, WASHINGTON, AMENDING THE CITY OF DAYTON  
2017 BUDGET, ADOPTED BY ORDINANCE NO. 1907 ON  
DECEMBER 5, 2016, AND SUBSEQUENTLY AMENDED BY  
ORDINANCE NO. 1909 ON MARCH 16, 2017.**

SECTION 1. AMEND.  
SECTION 2. ADOPT.  
SECTION 3. EFFECTIVE DATE.

The full text of Ordinance 1909 adopted the 8<sup>th</sup> day of May, 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.

By: /s/ Craig George, Mayor  
Attest: /s/ Trina Cole, City Clerk-Treasurer  
Approved as to form: /s/ Quinn Plant, City Attorney

Published: 05/18/2017  
Dayton Chronicle



**Whereas, the *City of Dayton, Washington*** includes a community of older Americans who richly contribute to our community; and

**Whereas, the *City of Dayton, Washington*** acknowledges that what it means “to age” has changed – for the better; and

**Whereas, the *City of Dayton, Washington*** is committed to supporting older adults as they take charge of their health, explore new opportunities and activities, and focus on independence; and

**Whereas, the *City of Dayton, Washington*** can provide opportunities to enrich the lives of individuals of *all* ages by:

- Involving older adults in the redefinition of aging in our community
- Promoting home- and community-based services that support independent living
- Encouraging older adults to speak up for themselves and others; and
- Providing opportunities for older adults to share their experiences

**Now therefore, the *City Council of the City of Dayton, Washington***, hereby proclaims *May 2017* to be Older Americans Month, and urges every resident to take time during this month to acknowledge older adults and the people who serve them as influential and vital individuals who greatly contribute to our community.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2017

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Authorized Signature  
City Council of Dayton, Washington