

**AGENDA
DAYTON CITY COUNCIL
SPECIAL SESSION/JOINT WORK SESSION
WITH YAMHILL COUNTY
BOARD OF COMMISSIONERS**



DATE: MONDAY, JUNE 20, 2016
PLACE: CITY HALL ANNEX, 408 FERRY STREET
TIME: 6:30 PM

Dayton – Rich in History....Envisioning Our Future

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>PAGE #</u>
A.	CALL TO ORDER & PLEDGE OF ALLEGIANCE	
B.	ROLL CALL	
C.	APPEARANCE OF INTERESTED CITIZENS	

This time is reserved for questions or comments from persons in the audience on any topic.

D.	PUBLIC HEARING <i>The City Council will hold a public hearing to obtain citizen input on the budget for the fiscal year beginning July 1, 2016 as approved by the City of Dayton Budget Committee.</i>	
	PUBLIC HEARING <i>The City Council will hold a public hearing to obtain citizen input on the proposed uses of State Revenue Sharing Funds in the City of Dayton FY2016/2017 Budget.</i>	
E.	ACTION ITEMS	
	1. Approval of Resolution 15/16-20 Authorizing Year End Transfers	1-6
	2. Approval of Resolution 15/16-21 Election to Receive State Revenue Sharing	7-8
	3. Approval of Resolution 15/16-22 Adopting the FY 2016-2017 Budget	9-14
	4. Approval of MBR Maintenance Agreement	15-30
F.	CITY COUNCIL COMMENTS/CONCERNS	
G.	INFORMATION REPORTS	
	1. City Manager's Report	
H.	CITY/COUNTY TOWNHALL DISCUSSION	
I.	CITY FACILITIES TOUR	
J.	ADJOURN	

Posted: 06.16.16

Rochelle Roaden, City Recorder

Persons with hearing, visual or manual impairments who wish to participate in the meeting should contact the City of Dayton AT LEAST 32 WORKING HOURS (4 DAYS) prior to the meeting date in order that appropriate communication assistance can be arranged. The City Hall Annex is accessible to the disabled. Please let us know if you need any special accommodations to attend this meeting.

NEXT MEETING DATES
City Council Regular Session, July 18, 2016
City Hall Annex, 408 Ferry St, Dayton

To: Honorable Mayor and City Councilors

From: Scott Pingel, City Manager

Issue: Resolution 15/16-20 Authorizing Year End Transfers, and Resolution 15/16-21 Election to Receive State Revenues

Background Information: Transfers between funds were budgeted in the FY 15-16 budget. The City Council, however, is required to take action authorizing the actual transfers to be made.

In order to receive the City's share of State Revenue Sharing Funds, the council is required to pass a resolution declaring the City's election to receive such funds.

City Manager Recommendation: I recommend approval of Resolutions 15/16-20 and 15/16-21.

Potential Motion for Resolution 15/16-20: "I move approval of Resolution 15/16-20 a Resolution Authorizing Year End Transfer of Funds in the FY 2015/16 Budget."

Potential Motion for Resolution 15/16-21: "I move approval of Resolution 15/16-21 a Resolution Declaring the City of Dayton's Election to Receive State Revenues for Fiscal Year 2016/2017."

City Council Options:

1 – Move approval of Resolutions 15/16-20 and 15/16-21.

2 – Move approval of Resolutions 15/16-20 and 15/16-21 with certain changes.

3 – Take no action and direct Staff to do more research and bring more options back to the City Council at a later date but not after June 30, 2016.

RESOLUTION No. 15/16-20
City of Dayton, Oregon

TITLE: *A Resolution Authorizing Year End Transfer of Funds in the FY 2015/16 Budget*

WHEREAS, on June 15, 2015, the City Council adopted the FY 2015-16 Budget, made appropriations and levied taxes with adoption of Resolution Number 14/15-11; and

WHEREAS, said FY 2015/16 Budget included various transfers from one fund to another; and

WHEREAS, sufficient revenues were raised during FY 2015/16 to fund all of the transfers budgeted.

The City of Dayton resolves as follows:

- 1) **THAT** it authorizes the transfer of funds as set forth in Exhibit A (attached hereto and made a part hereof); and

- 2) **THAT** this resolution will be effective immediately upon adoption by the City Council.

ADOPTED this 20th day of June, 2016.

In Favor:

Opposed:

Absent:

Abstained:

Elizabeth Wytoski, Mayor

Date Signed

ATTEST:

Rochelle Roaden
City Recorder

Date of Enactment

Exhibit A

2015/2016 SUMMARY OF TRANSFERS

Transferred From		Amount	Transferred to									Total
			Gen Fund 100-100	Sewer Fund 400-400	Water Cap 600-600	Sewer Cap 700-700	Equip Res 750-750	Bldg Res 760-760	Street Cap 770-770	Parks Cap 780-780	Debt 850-850	
General Fund	100-100	12,500					1,500	6,000		5,000		12,500
Street Fund	200-200	35,000					2,000	3,000	30,000			35,000
Water Utility Fund	300-300	306,000			80,000		3,000	3,000			220,000	306,000
Sewer Utility Fund	400-400	106,000				100,000	3,000	3,000				106,000
State Revenue Sharing	500-500	7,000	7,000									7,000
Totals		466,500										466,500

RESOLUTION No. 15/16-21
City of Dayton, Oregon

TITLE: *A Resolution Declaring the City of Dayton's Election to Receive State Revenues for Fiscal Year 2016/2017*

WHEREAS, ORS 221.760 provides as follows:

Section 1. The officer responsible for disbursing funds to cities under ORS 323.455, 366.785 to 366.820 and 471.805 shall, in the case of a city located within a county having more than 100,000 inhabitants according to the most recent federal decennial census, disburse funds only if the city provides four or more of the following services:

- 1) Police protection
- 2) Fire protection
- 3) Street construction, maintenance, and lighting
- 4) Sanitary sewer
- 5) Storm sewers
- 6) Planning, zoning, and subdivision control
- 7) One or more utility services

and

WHEREAS, city officials recognize the desirability of assisting the state office responsible for determining the eligibility of cities to receive such funds in accordance with ORS 221.760; and

WHEREAS, in order to receive State Revenue Sharing Funds, the City Council must hold two public hearings to allow the public to comment on possible uses of these funds and the proposed uses of these funds in the FY 2016-17 Budget; and

WHEREAS, these hearings were held by the Budget Committee on May 2, 2016; and by the City Council on June 20, 2016; and

WHEREAS, another requirement to receive these funds is that the City must enact a resolution each year stating that they wish to receive them.

Now, therefore, the City of Dayton resolves as follows

- 1) **THAT** pursuant to ORS 221.770, the City of Dayton hereby elects to receive state revenues for fiscal year 2016/2017; and
- 2) **THAT** the City of Dayton hereby certifies that it provides the following four or more municipal services enumerated in Section 1, ORS 221.760:
 - Police protection
 - Street construction, maintenance, & lighting
 - Sanitary sewer
 - Storm sewers

- Planning, zoning, and subdivision control
- Drinking water

and

- 2) **THAT** this resolution will be effective immediately upon adoption by the City Council.

ADOPTED this 20th day of June, 2016.

In Favor:

Opposed:

Absent:

Abstained:

Elizabeth Wytoski, Mayor

Date Signed

ATTEST:

**Rochelle Roaden
City Recorder**

Date of Enactment

To: Honorable Mayor and City Councilors

From: Scott Pingel, City Manager

Issue: Resolution 15/16-22 Adopts the 2016-17 Budget

Background Information: The budget is the same as approved by the Budget Committee.

City Manager Recommendation: I recommend approval of Resolution 15/16-22.

Potential Motion Verbiage: “I move approval of Resolution 15/16-22 A Resolution Adopting the City of Dayton Budget for the Fiscal Year 2016/2017; Making Appropriations; and Categorizing and Levying Ad Valorem Taxes.”

City Council Options:

1 – Move approval of Resolution 15/16-22.

2 – Move approval of Resolution 15/16-22 with certain changes.

3 – Take no action and direct Staff to do more research and bring more options back to the City Council at a later date but not after June 30, 2016.

RESOLUTION No. 15/16-22
City of Dayton, Oregon

TITLE: *A Resolution adopting the City of Dayton Budget for the Fiscal Year 2016/2017; Making Appropriations; and Categorizing and Levying Ad Valorem Taxes*

The City Council of the City of Dayton, Oregon, on the 20th day of June 2016, sat in special session for the transaction of City business.

BE IT RESOLVED THAT the City Council of the City of Dayton, Oregon, hereby adopts the FY 2016/2017 Budget approved by the Budget Committee on May 16, 2016, in the amount of **\$7,308,122 of which \$550,947 is in Unappropriated Ending Fund Balances**. Copies of said budget are on file at City Hall, 416 Ferry Street, Dayton, Oregon.

BE IT FURTHER RESOLVED:

- 1) **THAT** the amounts for the purpose of operating the City of Dayton for the FY 2016/2017 budget year be appropriated as follows, beginning July 1, 2016:

GENERAL FUND

Administration	\$144,759
Parks Department	\$107,845
Library	\$ 93,251
Planning Department	\$ 71,890
Building Program	\$ 82,064
Transfer to Equipment Replacement	\$ 2,000
Transfer to Building Reserve	\$ 6,000
Transfer to State Revenue Sharing	\$ 14,000
Transfer to Park Reserve	\$ 5,000
Contingency	\$100,000

FUND TOTAL **\$626,809**

UNAPPROPRIATED **\$221,367**

LOCAL OPTION TAX FUND

Personnel Services	\$ 50,980
Materials and Services	\$186,050
Capital Outlay	\$ 3,000
Contingency	\$109,253

FUND TOTAL **\$349,283**

STREET FUND

Personnel Services	\$ 40,065
Materials and Services	\$ 86,471
Capital Outlay	\$ 6,500
Transfer to Equipment Replacement Reserve	\$ 2,000

RESOLUTION No. 15/16-22
City of Dayton, Oregon

Transfer to Building Reserve	\$ 3,000
Transfer to Street Reserve	\$ 50,000
Contingency	\$ 36,684
FUND TOTAL	\$224,720
<u>WATER UTILITY FUND</u>	
Personnel Services	\$ 230,383
Materials & Services	\$ 368,517
Capital Outlay	\$ 12,000
Transfer to Building Reserve	\$ 5,000
Transfer to Equipment Replacement Reserve	\$ 3,000
Transfer to Water System Capital Project Fund	\$ 190,000
Transfer to Debt Service Fund	\$ 225,000
Contingency	\$ 150,000
FUND TOTAL	\$1,183,900
UNAPPROPRIATED	\$ 125,621
<u>SEWER FUND</u>	
Personnel Services	\$167,239
Materials & Services	\$200,592
Capital Outlay	\$ 6,500
Transfer to Building Reserve	\$ 3,000
Transfer to Equipment Replacement Reserve	\$ 3,000
Transfer to Sewer Reserve	\$100,000
Contingency	\$ 90,000
FUND TOTAL	\$570,331
UNAPPROPRIATED	\$ 18,594
<u>STATE REVENUE SHARING FUND</u>	
Materials & Services	\$ 39,100
Capital Outlay	\$ 14,177
FUND TOTAL	\$ 53,277
<u>WATER UTILITY CAPITAL FUND</u>	
Capital Outlay	\$ 285,458
FUND TOTAL	\$ 285,458
<u>SEWER UTILITY CAPITAL FUND</u>	
Capital Outlay	\$2,643,935
FUND TOTAL	\$2,643,935

**RESOLUTION No. 15/16-22
City of Dayton, Oregon**

<u>EQUIPMENT REPLACEMENT RESERVE FUND</u>	
Capital Outlay	\$ 8,500
Contingency	\$ 2,184
FUND TOTAL	\$10,684
<u>BUILDING RESERVE FUND</u>	
Capital Outlay	\$40,000
Contingency	\$ 9,507
FUND TOTAL	\$49,507
<u>STREET CAPITAL PROJECTS FUND</u>	
Materials & Services	\$175,000
Capital Outlay	\$193,179
Contingency	\$ 10,000
FUND TOTAL	\$378,179
<u>PARK CAPITAL PROJECTS FUND</u>	
Capital Outlay	\$32,734
Contingency	\$ 5,000
FUND TOTAL	\$37,734
<u>DEBT SERVICE FUND</u>	
Materials & Services	\$324,458
Reserve for Lafayette loan payoff	\$ 18,900
FUND TOTAL	\$343,358
UNAPPROPRIATED	\$185,365
TOTAL APPROPRIATIONS FOR ALL FUNDS FOR 2016/2017	\$6,757,175
UNAPPROPRIATED FUNDS	\$ 550,947
TOTAL FY 2016/17 BUDGET FOR CITY OF DAYTON	\$7,308,122

- 2) **THAT** the Dayton City Council hereby imposes and categorizes the taxes provided for in the adopted budget at the rate of \$1.7057 per \$1,000 of assessed value for tax year 2016/2017 upon the assessed value of all taxable property within the City of Dayton:

	<u>General Government</u>	<u>Excluded from Limitations</u>
Permanent Rate	\$1.7057/\$1,000	

RESOLUTION No. 15/16-22
City of Dayton, Oregon

- 3) **THAT** the Dayton City Council hereby imposes and categorizes the Local Option Tax provided for in the adopted budget at the rate of \$1.85 per \$1,000 of assessed value for tax year 2016/2017 upon the assessed value of all taxable property within the City of Dayton;

	<u>General</u> <u>Government</u>	<u>Excluded from</u> <u>Limitations</u>
Permanent Rate	\$1.85/\$1,000	

- 4) **THAT** the City Manager is authorized to prepare and submit any certifications of the taxes levied that may be deemed necessary by the Oregon Department of Revenue and Yamhill County.

- 5) **THAT** this resolution shall become effective July 1, 2016.

ADOPTED by the City Council of Dayton, Oregon, on this 20th day of June, 2016.

In Favor:

Opposed:

Absent:

Abstained:

Elizabeth Wytoski, Mayor

Date Signed

ATTEST:

Rochelle Roaden
City Recorder

Date of Enactment

To: Honorable Mayor and City Councilors

From: Scott Pingel, City Manager

Issue: Approval of MBR Maintenance Contract

Background Information: The City of Dayton's sewer treatment process has two basic challenges or problems to overcome. First, the City's lagoon system is running out of capacity, and second, the City needs to produce higher quality effluent to discharge to the river. I will touch on each problem and the solution the City has been pursuing.

The City of Dayton currently has a facultative lagoon system for treating and discharging wastewater (sewer water). The City has a system of lagoons through which sewer influent (sewer water that comes into the lagoons) travels before being chlorinated and dechlorinated prior to being discharged to the Yamhill River. With this type of treatment system, the City is only allowed to discharge sewer effluent (treated sewer water that is discharged) to the river from November 1st to April 30th (the winter season). The City is required to hold influent in the lagoons (or ponds) from May 1st to October 31st (the summer season). For several years now, the City has been running into capacity challenges with the sewer lagoons. Most years, the sewer ponds do not have the capacity to hold the influent through the entire summer season. The City has been required, then, to ask DEQ for permission to discharge effluent in September or October prior to our normal discharge season, or continue discharging in May after our normal discharge season.

Along with this capacity problem, the City also has requirements to meet for how clean the effluent should be when we discharge to the river. The City currently just chlorinates and dechlorinates effluent. During most winter seasons, however, the City struggles to meet permit requirements for Total Suspended Solids (TSS) and Biological Oxygen Demand (BOD). Both are measures of water quality. The City's Wastewater Facilities Plan provides upgrades and improvements options for overcoming both the capacity challenges as well as the BOD/TSS problem. These improvements are estimated to be in the \$5 to \$10 Million range and include, at a minimum, building a new large lagoon and the associated piping and facultative changes that come with it, as well as adding some kind of aeration system to the lagoons in order to improve our BOD/TSS numbers.

In the spring of 2014, the City was approached by a company called AquaArray. AquaArray had a product that would provide the City a solution to the BOD/TSS problem and possibly the capacity problem as well. AquaArray has patented a Membrane Bio Reactor (MBR) system that is done within a sewer lagoon and without the need for very costly infrastructure. In order to overcome the capacity problem for the City, however, the City either needs a full-year discharge permit or more lagoon space. AquaArray came up with the idea of pushing MBR-filtered water through a reverse osmosis (RO) unit in order to meet the water quality demands for pursuing a full-year discharge permit. The City essentially wanted AquaArray to prove that their system, in tandem with an RO unit, would work in producing sewer effluent clean enough to meet summer season discharge requirements. The City had an MBR Unit in the sewer ponds in the summer of

2014 and purchased an RO unit that arrived in late December 2014 and was up and running in January 2015.

In the meantime, the City had been working with DEQ to determine what the City would need to do in order to pursue a full-year discharge permit. DEQ decided to allow the City to discharge RO-filtered effluent for two summers (2015 and 2016) as a pilot study of this new treatment process.

We are currently in the second summer of our two-summer agreement with DEQ. Last summer, the City also purchased an additional 6 MBR racks to both test how much effluent each MBR rack could produce as well as to provide ample effluent to the RO unit to be processed and discharged. This was done, and the City was able to get about 3 months of data last summer of RO-filtered water. The process proved to work! The main question now is making it work on an ongoing basis and with much more volume, and then understanding the ongoing costs.

Heading into the current summer season, quite a bit of maintenance has been necessary in order to get the MBR racks running sufficiently to provide effluent to the RO unit. Winter storms did quite a bit of damage to the racks and piping systems, so we will be securing the racks better and more robust piping has been put in place. The MBR Units are up and running and we are running MBR effluent through the RO unit and discharging according to our agreement with DEQ.

At this point, there are a couple of challenges that need to continue to be worked on. The first challenge is simply continuing to work with AquaArray and James Reilly (the owner of the intellectual property for the MBR and he has been the primary installer of the MBR system) on the best way to pump MBR water to the RO unit and keep the MBR units up and running and in good condition, both through this summer season as we must test and provide data to DEQ, as well as on an ongoing basis so that maintenance needs become more routine and less costly. In order to do this, staff is suggesting the approval of a one-year time and materials maintenance contract with James Reilly of \$50,000, which is included in the packet. See Exhibit A of the Professional Services Agreement.

Another challenge (and a reason for taking a maintenance contract approach) has been uncertainty, both from the City's perspective as well as AquaArray's perspective. The City has uncertainty simply because this is a new approach to using filtering technologies in a new way, so we have experienced unexpected costs associated with the MBR/RO System as we have learned how the system works and how we will need to operate it. Making the MBR units work in tandem with an RO unit is a new approach even for AquaArray, so they have had to figure out the best way to make the two systems work together. AquaArray's uncertainty simply lies in the public process (city approval as well as the DEQ process) as well as in figuring out how to make the MBR system work with the RO unit. When a need arises for additional funds, they are subject not just to Steve's approval or my approval, but any cost over \$5,000 must be approved by the council. I recommend moving forward with the maintenance contract because it removes some of the uncertainty on both sides.

It will also be necessary to get bigger blowers for the MBR units and the electrical system likely needs to be upgraded, which staff anticipates being in the \$40,000 to \$50,000 range. The City's

electrician will be working with Mr. Reilly to provide more appropriate specifications for blowers and electrical upgrades, and City staff will plan on bringing a funding request to the City Council at the July 18th meeting.

Staff recognizes that the short-term costs have been fairly significant for the MBR/RO System. On the positive side, however, the City has been able to bear this burden with funds on hand so far. At this point, it is the opinion of staff that the short-term costs and ongoing maintenance costs are better than the alternative, which, over the next 4-5 years would mean building a new lagoon and adding aeration to the ponds. As we have been able to see that this process works and we continue to get lab test results that meet the requirements that would be placed on the City under a full-year discharge permit, City staff recommends moving forward with a maintenance contract and electrical upgrades.

After meeting with James Reilly regarding the MBR/RO System, City staff anticipate the following remaining capital costs and ongoing costs of the system:

Capital Costs over the next 4-5 years:	3 – 6 Additional MBR Racks \approx \$115,000
	Additional/New RO Unit(s) \approx <u>\$125,000</u>
	\$240,000

Ongoing Costs: System Maintenance \approx \$30,000/year

- MBR Filters and filter cleaning
- RO Membranes and membrane cleaning
- General MBR maintenance and parts

City Manager Recommendation: I recommend approval of the Professional Services Agreement between the City of Dayton and James Reilly.

Potential Motion Verbiage: “I move approval of the Professional Services Agreement between the City of Dayton and James Reilly in an amount not to exceed \$50,000.”

City Council Options:

- 1 – Move approval of the agreement.
- 2 – Move approval of the agreement with certain changes.
- 3 – Take no action and direct Staff to do more research and bring more options back to the City Council at a later date.

**CITY OF DAYTON
PROFESSIONAL SERVICES CONTRACT**

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is made and entered into by and between the City of Dayton, a municipal corporation in the State of Oregon ("City") and James Reilly ("Consultant") identified as follows:

Name	James Reilly
Mail Address	
City, State Zip	
Phone #	360-952-1438
E-Mail	Jim.reilly@hotmail.co.uk

1. EFFECTIVE DATE AND DURATION OF CONTRACT. This Contract shall become effective on July 1, 2016 ("Effective Date"). This Contract shall bind the City when it is authorized or ratified by the City Manager or designee. This Contract shall remain in full force and effect until terminated by either party pursuant to Section 27 of this Contract.

2. PROJECT MANAGERS. City's project manager is Scott Pingel. Consultant's project manager is James Reilly. Each party shall give the other timely written notification of any change in their respective project manager.

3. FUNDS AVAILABLE AND AUTHORIZED. City has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract.

4. RELATIONSHIP OF THE PARTIES.

4.1. Professional consultant. The Consultant shall provide the Services (as hereinafter defined) for the Project in accordance with the terms and conditions of this Contract. The Consultant's performance of Services shall be as a professional consultant to City to carry out the activities of the Project and to provide the technical documents and supervision to achieve City's Project objectives.

4.2. City oversight/other consultants. In administering this Contract, City may retain the services of an independent project manager, and potentially, other consultants or other contracts for additional or related work as needed to fulfill City's objectives. Consultant shall fully cooperate with such additional contractors and with any City employees concerned with such additional or related work, and shall coordinate the performance of work under this Contract, with such additional or related work. Consultant shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by any City employee.

4.3. Written consent for sub-contracts, assignment; successors-in-interest. Consultant shall not make any sub-contract with any other party for furnishing any of the Project's Services or assign or transfer any interest in this Contract, without obtaining the express prior written

consent of City. In any case, this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any. Should sub-contracts be allowed, the Consultant shall provide a list of all Sub-contractors which the Consultant intends to utilize on the Project. This list shall include such information on the qualifications of the Sub-contractors as may be requested by City. City reserves the right to review the Sub-contractors proposed, and the Consultant shall not retain a Sub-contractors to which City has a reasonable objection.

5. SCOPE OF WORK. The Consultant shall provide to the City all services related to completion of the project (the "Project") as more particularly described in Consultant's proposal ("Proposal"), attached to this Contract as Exhibit A and incorporated herein by reference. In the event of inconsistencies between this Contract and Exhibit A, the provisions of this Contract shall control. Generally, the services to be performed by the Consultant on the Project consist of the following and as more specifically described in Exhibit A (the "Services"):

- Membrane Bio Reactor system maintenance

Consultant is required to obtain all necessary licenses (state and local) necessary to operate its business in the City and to perform the Services.

6. PAYMENT. City agrees to pay Consultant in accordance with Exhibit A for satisfactory completion of the Project.

6.1 Consultant shall submit monthly billings for work performed. The billings shall describe all materials supplied and work performed with particularity and shall itemize and explain all expenses for which reimbursement is claimed. Unless the amount and rate of reimbursement are specified in an attached exhibit to this Contract, the City will not reimburse Consultant for any expenses under this Contract.

6.2 City shall pay Consultant for the amount billed each month within 30 (thirty) days after receiving Consultant's billing in a format acceptable to the City. City shall not pay any amount in excess of the compensation amounts set forth above nor shall City pay Consultant any fees or costs which City reasonably disputes. If such a dispute arises, Consultant will continue to perform its duties under this Contract.

7. CONTRACT PERFORMANCE. Consultant shall at all times perform the Services diligently, without delay and punctually fulfill all requirements herein, consistent with the schedule for the performance of Consultant's services set forth in Exhibit A. Time is of the essence in the performance of this Contract.

8. CHANGES. This Contract, including all exhibits attached hereto, shall not be waived, altered, modified, supplemented, extended or amended, in any manner whatsoever, except by written instrument, executed by both parties. Such waiver, alteration, modification, supplement, extension or amendment, if made, shall be effective only in the specific instance and for the specific purpose given. The parties acknowledge and agree that, to the extent permitted by law, this Contract may be amended to specifically provide for additional Consultant services that are within or directly related to the Project. Failure of Consultant to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized

extra work and Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.

9. EXECUTION AND COUNTERPARTS. This Contract, and any amendments to this Contract, may be executed in counterparts (each of which shall be an original and all of which shall constitute one and the same instrument) or in multiple originals. A faxed form of this Contract or any amendment thereto, executed by one or more of the parties, will constitute a counterpart hereof, as long as the counterpart bearing the party's original signature is transmitted to the other party and received by that party forthwith.

10. DUTY TO INFORM. Consultant shall give prompt written notice to City's Project Manager if, at any time during the performance of this Contract, Consultant becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Consultant shall constitute neither agreement with nor acquiescence in Consultant's statement or claim and shall not constitute a waiver of any of City's rights.

11. NOTICE. Except as otherwise expressly provided in this Contract, any communications between the parties or notices to be given hereunder shall be given in writing by personal delivery, facsimile or mailing, postage prepaid, to Consultant or City at the address or number set forth on this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given 5 (five) calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed to be given when the transmitting machine generates a transmission receipt. To be effective against City, such facsimile transmission must be confirmed by telephone notice to the City's Project Manager identified in this Contract, and shall not be deemed to be given until such confirmation is completed. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

12. CONFLICT OF INTEREST. Except with City's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

13. NO THIRD-PARTY BENEFICIARIES. City and Consultant are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

14. PROJECT INFORMATION & CONFIDENTIALITY. Consultant agrees to share all Project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the Project. No reports, information or data given to or prepared or assembled by Consultant under the Contract shall be made available or used for anything other than the work set forth under the Contract by Consultant to any individual or organization (except City) without the prior written approval of City which approval is in the

City's sole and absolute discretion.

15. RECORDKEEPING. Consultant and Sub-contractors shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Consultant and Sub-contractors shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Consultant's and Sub-contractors' performance hereunder. All such fiscal records, books, documents, papers, plans, and writings shall be retained by Consultant and Sub-contractors and kept accessible for a minimum of 6 (six) years after the Contract's expiration, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. If for any reason, any part of this Contract, any Project-related consultant contract or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than 6 (six) years or until all litigation is resolved, whichever is longer. Consultant shall provide City with full access to these records in preparation for and during litigation.

16. ACCESS TO RECORDS. Consultant agrees that City and its authorized representatives shall have access to all books, documents, papers and records of the Consultant which are directly related to the Contract for the purpose of making any audit, examination, copies, excerpts and transcripts.

17. INDEPENDENT CONTRACTOR STATUS. Consultant shall be free from City's direction and control over the means and manner of providing Project labor or service, subject only to the specifications of the desired results. Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law. Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:

17.1 Consultant is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under this Contract.

17.2 Consultant is not eligible for any federal social security, unemployment insurance, pension, state retirement system or workers' compensation benefits from compensation or payments paid to Consultant under this Contract.

17.3 Consultant has filed federal and state income tax returns in the name of the business as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.

17.4 Consultant is not an employee of Metro, any special district, or local government, including City, the federal government or the State of Oregon.

18. PAYMENT OF LABORERS; PAYMENT OF TAXES.

18.1 Consultant shall:

18.1.1 Make payment promptly, as due, to all persons supplying to the Consultant labor and material for the performance of the work provided for in the Contract (ORS 279B.220(1));

18.1.2 Pay all contributions or amounts due to the Industrial Accident Fund incurred in the performance of this Contract, and shall ensure that all Sub-contractors pay amounts due from their performance (ORS 279B.220(2));

18.1.3 Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished (ORS 279B.220(3)); and

18.1.4 Be responsible for all federal, state and local taxes applicable to any compensation or payments paid to the Consultant under this Contract and pay to the Department of Revenue all sums withheld from employees under ORS 316.167. Unless the Consultant is subject to backup withholding, the City will not withhold from such compensation or payments any amount(s) to cover the Consultant's federal or state tax obligation (ORS 279B.220(4)).

18.2 The Consultant shall promptly as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Consultant, of all sums that the Consultant agrees to pay for the services and all moneys and sums that the Consultant collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the service (ORS 279B.230(1)).

18.3 Consultant, its subcontractors and all employers, if any, providing services, labor or materials under the Contract are subject to Oregon Workers' Compensation Law, which requires all subject employers working under this Contract are either employers that will comply with ORS 656.017 or are employers that are exempt under ORS 656.126. Consultant shall ensure that each of its subcontractors, if any, complies with these requirements (ORS 279B.230(2)).

19. COMPLIANCE WITH APPLICABLE LAW. Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Services under the Contract.

19.1 Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract and incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated:

19.1.1 Titles VI and VII of the Civil Rights Act of 1964, as amended;

19.1.2 Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

19.1.3 the Americans with Disabilities Act of 1990, as amended;

19.1.4 Executive Order 11246, as amended;

19.1.5 the Health Insurance Portability and Accountability Act of 1996;

19.1.6 the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

19.1.7 the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;

19.1.8 ORS Chapter 659, as amended;

19.1.9 all regulations and administrative rules established pursuant to the foregoing laws; and

19.1.10 all other applicable requirements of federal, state and municipal civil rights and rehabilitation statutes, rules and regulations.

19.2 City's performance under the Contract is conditioned upon Consultant's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 which are incorporated by reference herein.

19.3 Any person employed on work under this Contract shall be paid at least time and a half for all overtime worked in excess of 40 (forty) hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime (ORS 279B.235(3)).

20. REPRESENTATIONS AND WARRANTIES.

20.1 Consultant represents and warrants to City that:

20.1.1 Consultant has complied and will continue to comply with all Oregon laws relating to the performance of Consultant's obligations under this Contract;

20.1.2 Consultant shall be qualified, professionally competent and duly licensed to perform the Services at all times during the term of this Contract;

20.1.3 Consultant has the skill and knowledge possessed by well-informed members of its industry, trade or profession and will apply that skill and knowledge with care and diligence to perform the Project under this Contract in a professional manner and in accordance with standards prevalent in Consultant's industry, trade or profession;

20.1.4 Consultant has the power and authority to enter into and perform this Contract;

20.1.5 When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms;

20.1.6 The persons executing this Contract on behalf of the Consultant have the actual authority to bind the Consultant to the terms and conditions of this Contract;

20.1.7 Consultant prepared its Proposal, Exhibit A to this Contract, independently from all other proposers, and without collusion, fraud or other dishonesty; and

20.1.8 The provisions of this Contract do not conflict with, or result in a default under, any agreement or other instrument binding upon the Consultant and do not result in a violation of any law, regulation, court decree or order applicable to the Consultant

20.2 Upon City's request, Consultant shall provide City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties. The warranties set forth in this paragraph are in addition to, and not in lieu of, any other provided warranties.

21. INSURANCE. Consultant shall obtain prior to beginning any work under this Contract and shall maintain in full force and effect for the term of this Contract or any other time periods required herein, at Consultant's expense, an occurrence form comprehensive general liability and automobile insurance policies for bodily injury, including death, and broad form property damage, including loss of property and coverage for owned, hired or non-owned vehicles, as applicable, for the protection of Consultant and the City, its elected and appointed officials, officers, as additional insureds. The policies shall be primary policies and any other insurance carried by City shall be excess. The policies shall be issued by a company authorized to do business in the State of Oregon and providing single limit general liability coverage of \$1,000,000 and separate automobile coverage of \$1,000,000. The certificates shall provide that City will receive 60 (sixty) days' written notice of cancellation or material modification of the insurance contract to the City Project Manager. Consultant shall provide certificates of insurance and additional insured endorsements to City evidencing the date, amount, and type of insurance prior to commencement of any work under this Contract. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

21.1 WORKERS' COMPENSATION COVERAGE. Consultant certifies that Consultant has qualified for State of Oregon Workers' Compensation coverage for all Consultant's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier insured employer as provided by ORS 656.407 or as a self-insured employer. Consultant shall provide to City within 10 (ten) days after Contract Effective Date, a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without 60 (sixty) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Consultant is self-insured.

22. INDEMNIFICATION. Consultant shall indemnify, defend, save and hold harmless City, its elected and appointed officials, and officers, against all liability, claims, suits or actions of whatsoever nature, loss or expenses, including attorney fees, based upon or arising out of the acts or omissions of the Consultant or its Sub-contractors, agents, or employees under this Contract.. In addition, Consultant expressly agrees to indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, against all liability, claims, suits, actions, loss or expenses, including attorney fees, arising out of or related to any claims that the Project, Services, or any

other tangible or intangible items delivered to City by Consultant that may be the subject of protection under any state of federal intellectual property law or doctrine, or the City's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design or other proprietary right of any third party.

23. BREACH OF CONTRACT. Consultant shall remedy any breach of this Contract within the shortest reasonable time after Consultant first has actual notice of the breach or City notifies Consultant of the breach, whichever is earlier.

23.1. If the City determines that the breach is material and Consultant fails to remedy the breach in accordance with this Section, City may declare Consultant in default and pursue any remedy available for a default.

23.2. Pending a decision to terminate all or part of this Contract, City unilaterally may order Consultant to suspend all or part of the services under this Contract. If City terminates all or part of the Contract pursuant to this Section, Consultant shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Contract and later orders Consultant to resume those services, Consultant shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

23.3 To recover amounts due under this Section, City may withhold from any amounts owed by City to Consultant, including but not limited to amounts owed under this or any other contract between Consultant and City.

24. FORCE MAJEURE. Neither City nor Consultant shall be held responsible for delay or default caused by fire, riot, acts of nature, or war where such cause was beyond, respectively, City's or Consultant's reasonable control. Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

25. WAIVER. The failure of City to enforce any provision of this Contract shall not constitute a waiver by City of that or any other provision.

26. DEFAULT. City, by written notice of default (including breach of contract) to Consultant, may terminate the whole or any part of the Contract:

26.1 If Consultant fails to provide Services called for this Contract within the time or manner specified herein, or any extensions thereof; or

26.2 If Consultant fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such longer period as City may authorize in writing.

27. TERMINATION.

27.1 This Contract may be terminated by the City, in its sole discretion, per the terms of Exhibit A.

27.2 Consultant may terminate this Contract upon 30 (thirty) days' written notice to City if City fails to pay Consultant pursuant to the terms of this Contract and City fails to cure within 30 (thirty) days after receipt of Consultant's notice or such longer period of cure as Consultant may specify in such notice.

27.3 Upon receiving a notice of termination, Consultant shall immediately cease all activities under this Contract, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, As directed by City, Consultant shall deliver to City all Contract documents, information, works-in-progress and other property that are or would be deliverable had the Contract been completed. The rights and remedies of City provided in this Section related to defaults by the Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

28. GOVERNING LAW; JURISDICTION. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

29. MEDIATION; TRIAL WITHOUT A JURY. Should any Contract related dispute arise between the Parties it is agreed that such dispute will be submitted to a mediator prior to any litigation and the Parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, then through litigation. Any litigation arising under or as a result of this Contract shall be tried to the court, without a jury.

29.1 The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by the Parties. Mediation will be conducted in Portland, Oregon, unless the Parties agree in writing otherwise. Parties agree to exercise good faith efforts to resolve all Contract related disputes through the mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the Parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon the request of either party. The Parties shall retain all rights with respect to any dispute not covered by this Section.

30. SEVERABILITY. Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

31. MERGER CLAUSE; CONTRACTOR CERTIFICATION. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED HEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED HEREIN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT THE SUPPLIED CONTRACTOR DATA IS TRUE AND ACCURATE AND CONSULTANT HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[signature page follows]

Signed this _____ day of _____, 20__.

FOR THE CONSULTANT:

FOR THE CITY:

Signature

City Manager

James P. Reilly
Name (Printed)

Mailing Address

Mailing Address

City, State, Zip

360-952-1438
Phone Number

APPROVED AS TO FORM:

Jim.reilly@hotmail.co.uk
E-mail

City Attorney

Proposed Services Agreement Contract between James Reilly and the City of Dayton Oregon

Background

AquaArray, a Washington based company owned and operated by Victoria Jelderks PE has provided a wastewater treatment facility residing on the Dayton WWTP lagoon system. This system was based upon the designs and other intellectual property of James Reilly. Mr. Reilly has no contractual relationship to AquaArray other than the agreement to allow the City of Dayton to own and eventually operate the AquaArray treatment plant based upon his designs. Mr. Reilly was also the primary project leader and installer of all three Dayton WWTP projects with AquaArray (the pilot program, the phase 1 installation from July 2015 and the phase 2 installation from Dec 2015).

One Year Operating Services Agreement with Renewal Option

To ensure the continuity and viability of the Dayton WWTP, Mr. Reilly is prepared to offer his continual services to the City of Dayton in providing maintenance, diagnostics, upgrades and whatever else is necessary to ensure that the Dayton WWTP will be maintained in good working condition. This agreement will be for a twelve month duration and may be renewed by the City of Dayton at its sole discretion.

The following is an incomplete list of items that Mr. Reilly will perform / supervise / design/ install etc:

- Ongoing cleaning and other operations to ensure that the raft based MBR system is working properly (Note for cleaning the membranes the city will provide the citric acid or bleach as needed. This expense for the entire year should be < \$2000).
- Maintenance of any breakages including piping membrane components, air components etc.
- Any on-site needed upgrades based upon unforeseen changes to the system.
- 24x7 support during the critical summer discharge months to ensure the system is working properly

Maintenance Procedures Optimization, Documentation and Training

In addition to these on-going duties, Mr. Reilly will be enhancing and upgrading the Dayton WWTP platform with the intent of providing a comprehensive and comprehensible system for maintenance that can be taught and implemented by existing Dayton Public Works staff. As part of this maintenance procedures refinement and enhancement, Mr. Reilly will produce a manual which will include all salient information related to all WWTP processes.

Storm Events and other unknowns

One of the critical requirements that was left unaddressed last year was peak storm maintenance during various high flow events last year. This is an area of keen interest and focus for Mr. Reilly for the

Exhibit A

duration of this maintenance contract. Mr. Reilly will monitor the WWTP system closely during high storm events.

Pre-Summer Membrane System Inspection and run-throughs

This last year there were a number of hidden/submerged insults to the MBR system that caused some delay in understanding performance of the system during initial May 1-15 startup. Therefore a thorough inspection of each and every MBR unit (including each membrane hose connection, each air hose connection and other connections) will be performed as part of seasonal startup procedures.

Test data collection

From time to time it might be necessary to perform lab testing on the system. Mr. Reilly will be responsible for obtaining all relevant samples for lab testing and evaluation

Other Testing/ Technology Analysis

Presently there are several unknowns that still need to be answered relating to RO cleaning frequency, chemicals used, RO influent composition, RO membrane fouling deposit composition and others. Mr. Reilly will be responsible for managing these issues.

Department of Environmental Quality

Mr. Reilly will be available to sit in on any and all DEQ meetings related to the WWTP permitting or technology evaluation process.

Emergency Availability

Where possible and applicable, Mr. Reilly will be willing to help out the City of Dayton in any lagoon related emergency. This extends beyond the MBR/RO components of the system but might be important to ensure the success of the overall system the following year. Mr. Reilly agrees to make reasonable efforts to supports these critical events in any way that is viable.

Other Unforeseen Tasks

This proposal is intended to be a broad outline of the types of tasks and responsibilities that Mr. Reilly will be performing as part of this services agreement. Should other WWTP related issues emerge that are not delineated in this document, Mr. Reilly will agree to make best efforts at addressing these issue within the spirit of the agreement and reasonableness of unforeseen tasks.

Compensation by City

The City of Dayton will pay Mr. Reilly for the aforementioned services a sum of \$50,000 for fiscal year July 1, 2016 through June 30, 2017 in monthly installments of \$4,166.67 due by the 15th of each month beginning July 2016.