

Marysville City Council Meeting**February 9, 2015****7:00 p.m.****City Hall****Call to Order****Invocation****Pledge of Allegiance****Roll Call****Approval of the Agenda****Committee Reports****Presentations**

A. State of the Court Presentation *

Audience Participation**Approval of Minutes** (*Written Comment Only Accepted from Audience.*)

1. Approval of the January 5, 2015 City Council Work Session Minutes.
2. Approval of the January 12, 2015 City Council Meeting Minutes.

Consent

3. Approval of the January 21, 2015 Claims in the Amount of \$1,206,110.87; Paid by Check Numbers 97469 through 97587 with Check Number's 96241, 97159, and 97459 Voided.

4. Approval of the January 28, 2015 Claims in the Amount of \$346,526.53; Paid by Check Numbers 97588 through 97638 with No Checks Voided.

6. Consider Approving the Petition to Construct or Reconstruct a Highway-Rail Grade Crossing.

7. Consider Approving the Amendment to the Construction and Maintenance Agreement with BNSF Railway Company in the Amount of \$372,024.00 with a Management Reserve of \$50,000 - for a Total Authorization of \$422,024.00.

8. Consider Approving the Local Agency Federal Aid Project Prospectus and Local Agency Funding Agreement with WSDOT thereby Securing Funding for the 67th Avenue NE Overlay (88th Street NE to 108th Street NE) Project.

****These items have been added or revised from the materials previously distributed in the packets for the February 2, 2015 Work Session.***

Marysville City Council Meeting

February 9, 2015

7:00 p.m.

City Hall

10. Consider Approving the Third Amendment to the Chief Administrator Officer's Employment Contract. *

Review Bids

Public Hearings

5. Consider an **Ordinance** of the City of Marysville Vacating a Portion of 25th Avenue NE and an Existing Stormwater Detention Pond Located North of 172th Street NE (SR 531) in the City of Marysville, Washington.

New Business

9. Consider the Marysville Golf Course Management Agreement with Premier Golf Centers LLS of Seattle, Washington to Assume Management Operations of Cedarcrest Golf Course effective March 1, 2015 in the Amount of \$8,000 Per Month Including an Annual Growth Incentive Fee as Recognized within the Agreement. *

11. Consider the Second Amendment to Agreement for Joint Operation of Fire and Emergency Medical Protection Facilities. *

Legal

Mayor's Business

Staff Business

Call on Councilmembers

Executive Session

- A. Litigation
- B. Personnel
- C. Real Estate

Adjourn

Special Accommodations: The City of Marysville strives to provide accessible meetings for people with disabilities. Please contact the City Clerk's office at (360) 363-8000 or 1-800-833-6384 (Voice Relay), 1-800-833-6388 (TDD Relay) two days prior to the meeting date if any special accommodations are needed for this meeting.

**These items have been added or revised from the materials previously distributed in the packets for the February 2, 2015 Work Session.*

Index #1

COUNCIL



DRAFT
MINUTES

Work Session
January 5, 2015

Call to Order / Pledge of Allegiance

Mayor Nehring called the Work Session to order at 7:00 p.m. and led those present in the Pledge of Allegiance.

Roll Call

Chief Administrative Officer Hirashima gave the roll call. The following staff and councilmembers were in attendance.

Mayor: Jon Nehring

Council: Steve Muller, Kamille Norton, Jeff Seibert, Michael Stevens, Rob Toyer, Jeff Vaughan, and Donna Wright

Absent: None

Also Present: Chief Administrative Officer Gloria Hirashima, Finance Director Sandy Langdon, City Attorney John Walker, Public Works Director Kevin Nielsen, Parks and Recreation Director Jim Ballew, and Recording Secretary Laurie Higdahl.

Mayor Nehring asked Council to approve tonight’s agenda and consider waiving the normal rules for a study session in order to allow a vote for committee appointments later in the agenda.

Motion made by Councilmember Stevens, seconded by Councilmember Vaughan, to approve the agenda with the ability to vote on items under Mayor’s business regarding committee assignments. **Motion** passed unanimously (7-0).

Committee Reports

Discussion Items

Approval of Minutes

1. Approval of December 1, 2014, City Council Work Session Minutes.
2. Approval of December 8, 2014 City Council Meeting Minutes.

Consent

3. Consider Approval of the December 10, 2014 Claims in the Amount of \$266,337.63; Paid by Check Numbers 96550 through 96664 with Check Number 96364 voided.
4. Consider Approval of the December 17, 2014 Claims in the Amount of \$677,769.81; Paid by Check Numbers 96665 through 96842 with Check Numbers 94464 and 95617 Voided.
5. Consider Approval of the December 24, 2014 claims in the amount of \$648,508.69 paid by Check Numbers 96843 through 97002 with Check Numbers 89356, 94638, 96757 and 96801 voided.
6. Approve the December 19, 2014 payroll in the amount \$1,252,324.62 Check Numbers 28457 through 28498.

Review Bids**Public Hearings****New Business**

7. Consider the Fuel Tax Grant Distribution Agreement with the Transportation Improvement Board thereby Securing Funding for the Grove Street Sidewalk Improvements Project from State Avenue to Cedar Avenue.

Director Nielsen stated that this is a grant with TIB to put sidewalks in on Grove Street from Cedar Avenue to State Avenue. This does not include pavement or other improvements such as channelization, but staff will be looking into that because this is a potential location for an undercrossing.

8. Consider the Interlocal Agreement with Snohomish County for Participation in County's Overlay Program.

Director Nielsen explained this is an Interlocal Agreement with the County to participate in their annual overlay program. He explained it is a new program that can go up to \$500,000. The County is considering using a new asphalt mix which is thinner and will go further. The life expectancy is still 20 years. It is possible that all of Sunnyside can be done with the TBD money set aside this year for overlays.

DRAFT

9. Consider the Local Agency Agreement Supplement No. 1 with WSDOT in the Amount of \$12,000.

Director Nielsen stated this is a supplement for the signal at 528 and 53rd to support WSDOT's review and construction review of the project.

10. Consider Acceptance of the Police Evidence Building Expansion Project with Obom Construction, Starting the 60-Day Lien Filing Period for Project Closeout.

Director Nielsen stated that this is done and ready for acceptance. He added that the police are very pleased with it.

11. Consider a **Resolution** of the City of Marysville, Washington Related to Nonconforming Situations amending Marysville Municipal Code (MMC) Sections 22C.100.030(3) and MMC 22C.100.040(3); and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Providing for Severability and Effective Date.

Planning Manager Holland explained that this Resolution relates to setting a hearing regarding a proposed vacation for a portion of 25th Avenue NE for the commercial project of Lakewood Station. He summarized the history of this item.

12. Consider an **Ordinance** Related To Master Planned Senior Communities By Amending Marysville Municipal Code (MMC) Section 22C.020.060 Permitted Uses; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Repealing Ordinance 2969 and Terminating the Moratorium Established therein; and Providing for Severability and Effective Date.

Planning Manager Holland explained that this relates to the six-month moratorium for master planned senior communities within commercial zones. The Planning Commission did work sessions and held a public hearing and is recommending that master planned senior communities not be permitted within the Neighborhood Business, Community Business, General Commercial and Downtown Commercial zones. This would be compatible with the current 20-year Land Use Plan.

13. Consider an **Ordinance** Related to Enactments Adopted by the Washington State Legislature by Amending Marysville Municipal Code (MMC) Sections 22C.020.060 Permitted Uses; 22C.010.070 Permitted Uses – Development Conditions; 22G.010.150 Administrative Approvals Without Notice; 22G.010.250 Vesting; 22G.010.260 Minor Revisions to Approved Development Applications; 22G.010.270 Major Revisions to Approved Residential Development Applications; 22G.010.280 Revisions not Defined as Minor or Major; 22G.010.290 Supplemental Information; 22G.010.300 Oath of Accuracy; 22G.010.310 Limitations on Refiling of Applications; 22G.010.320 Code Compliance Review – Actions Subject to Review; 22G.010.330 Decisions and Appeals; 22G.010.340 Actions Subject to Review; 22G.010.350 Notice

Requirements and Comment Period; 22G.010.360 Decision or Public Hearing Required; 22G.010.370 Additional Requirements Prior to Hearing; 22G.010.380 Decision Regarding Proposal; 22G.010.390 Time Limitations; 22G.010.400 Purpose; 22G.010.410 Temporary Use Permit; 22G.010.420 Variance; 22G.010.430 Conditional Use Permit; 22G.010.440 Rezone Criteria; 22G.010.450 Rezone and Review Procedures; 22G.010.460 Home Occupation Permit; 22G.010.470 Continuing Jurisdiction; 22G.010.480 Cancellation of Decisions; 22G.010.490 Transfer of Ownership; 22g.010.500 Purpose; 22G.010.510 Authority and Application; 22G.010.520 Required Findings; 22G.010.530 Burden of Proof; 22G.010.540 Appeal Process – General Description; 22G.010.550 Appeal of Administrative Interpretations and Approvals; 22G.010.560 Judicial Appeal; 22G.030.020 General Fee Structure; 22G.090.170 Preliminary and Final Subdivision Approval – Terms; 22G.090.185 Revisions After Preliminary Subdivision Approval; Repealing 22G.090.280; Amending Section 22G.090.380 Preliminary and Final Short Subdivision Approval – Terms; and Creating New Sections 22G.090.385 Revisions After Preliminary Short Subdivision Approval; 22G.100.125 Revisions; 22G.120.390 Revision of the Official Site Plan; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City’s Uniform Development Code; Providing for Severability and Effective Date.

Planning Manager Holland explained that as a result of WCIA’s audit process last year staff is proposing several code amendments in order to be consistent with current state law.

Councilmember Seibert referred to Exhibit A under F where it speaks to the change to internal lot lines and asked if requirements such as lot width and not having multiple panhandle lots next to each other would still apply. Planning Manager Holland stated that they would.

14. Consider an **Ordinance** Related to Nonconforming Situations amending Marysville Municipal Code (MMC) Sections 22C.100.030(3) and MMC 22C.100.040(3); and Amending MMC Section 22A.010.160 General Administration, Related Tracking Amendments to the City’s Uniform Development Code; Providing for Severability and Effective Date.

Planning Manager Holland explained that this would make approval of certain nonconforming situations administrative reviews which would waive the current fees and just require a building permit and a site plan submittal and review.

15. Consider an **Ordinance** Related to Definitions and the Sign Code Amending Marysville Municipal Code (MMC) Sections 22A.020.140 “Monument Sign” Definition; 22C.160.170(10) Development Standards – Freestanding Signs; 22C.160.180(5) Development Standards – Electronic Message, Animated and Changeable Copy Signs; 22C.160.240(1)(B) Nonconforming Signs; and Amending MMC Section 22A.010.160 General Administration, Related to

Tracking Amendments to the City's Uniform Development Code; Providing for Severability and Effective Date.

Planning Manager Holland reviewed the proposed sign code revisions which would clarify regulations for new signage.

16. Consider an **Ordinance** Related to the City's Animal Control Regulations; and Adding a New Section 10.04.335 Beekeeping to MMC Chapter 10.04 Animal Control.

Associate Planner Angela Gemmer stated that in response to concerns that were raised to the City Council staff did research on beekeeping provisions in other jurisdictions and invited comment from the local beekeeping organization at the Planning Commission. The proposed ordinance would prohibit hives on lots 5,000 feet and less and allow a certain number of hives for lots in increments greater than that. There would be an agricultural exemption to allow five hives per acre on sites that are four acres or larger. There would also be provisions for setbacks to make sure adjacent properties aren't adversely impacted by the bees and a provision to requeen the colony annually. There would be a requirement to register hives with the state, which is actually already state law.

Councilmember Toyer asked staff if they had touched base with the citizen who raised this issue initially to see if it addressed her concerns. Ms. Gemmer replied that some of her concerns related to minimum lot size, and she thought this would address this. She offered to touch base with her again to see what she thought of the proposal.

Councilmember Wright asked how this would affect the neighbor who was keeping the bees. Ms. Gemmer stated that it would require a decrease from three to two hives. She added that there is a provision that was strongly recommended by the beekeepers to allow a temporary increase in hives because sometimes the swarming problem is due to overpopulation. Additional hives for a brief period can help get the bees under control.

Councilmember Muller asked how requeening would be enforced. Ms. Gemmer replied that it would primarily be complaint-driven.

17. Consider an **Ordinance** Amending Marysville Municipal Code (MMC) Sections 10.04.460 Regarding Commercial Kennels and Pet Shops – General Conditions; MMC 22A.020.120 by Amending the Definition for “Kennel, Commercial”; MMC 22A.020.170 by Adding a Definition for “Pet Daycare”; MMC 22C.020.060 Regarding Table of Permitted Uses; MMC 22C.020.070 Regarding Permitted Uses – Development Conditions; and Amending MMC 22A.010.160 Regarding General Administration, Related to Tracking Amendments to the City's Unified Development Code.

Ms. Gemmer stated that recently there have been inquiries about a dog kennel going in the former Sears building, but due to the current 5-acre minimum lot size in the code it would not be allowed. This ordinance would eliminate the 5-acre minimum lot size

requirement for dog kennels, establish a specific permitted uses classification for pet daycares, incorporate some health and sanitation standards and provisions for wellbeing of animals, establish minimum setbacks from neighboring residential uses, and establish mitigation measures if there are noise complaints.

18. Consider an **Ordinance** Amending MMC 22D.020.090(5); MMC 22D.020.100 Regarding Parks, Recreation, Open Space and Trail Impact Fees and Mitigation; MMC 22D.040.050; MMC 22d.040.60 Regarding School Impact Fees and Mitigation; MMC 22D.030.070 Regarding Traffic Impact Fees and Mitigation; MMC 22A.010.160 Regarding General Administration, Related to Tracking Amendments to the City's Unified Development Code; Providing for Severability and Effective Date.

Ms. Gemmer stated that in reviewing the Comprehensive Plan and Development Regulations, staff discovered that the term for which traffic, school, and park impact fees may be expended has increased from six to ten years. This Ordinance would update those terms to be in alignment with state law.

19. Consider an **Ordinance** Related to the State Environmental Policy Act (SEPA) Amending Marysville Municipal Code (MMC) Section 22E.030.090; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Providing for Severability and Effective Date.

Planning Manager Holland explained that the Phase 2 SEPA regulations meant that some sections need to be amended to align the code with state law.

20. Consider an **Ordinance** Related to Wireless Communication Facilities (WCF) Amending Marysville Municipal Code (MMC) Section 22C.250.030 Adding Subsection (7) Related to WCF SEPA Exemptions; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Providing for Severability and Effective Date.

Planning Manager Holland stated that this would amend the Wireless Communication Facilities section of Title 22 in order to state that that they are exempt from SEPA under certain circumstances. It references state law and incorporates it into city code.

21. Consider an **Ordinance** Related to Critical Areas Management – Article IV 'Geologic Hazards' Amending Marysville Municipal Code (MMC) Sections 22E.010.280; 22E.010.300(2); 22E.010.310(E) And Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Providing for Severability and Effective Date.

Planning Manager Holland explained that as a result of the Oso landslide staff reviewed the Geologic Hazards section of the code and LIDAR mapping and is recommending an amendment to the code regarding setback requirements.

27. Consider Professional Services Agreement between City of Marysville and Summit Law Group.

CAO Hirashima reviewed this item.

Legal

22. Agreement for Legal Services between City of Marysville and Weed, Graafstra and Benson, Inc. P.S.

CAO Hirashima explained that there are still a number of projects in process at Weed, Graafstra, and Benson. This would provide for completion of those.

Mayor's Business

23. Reappointment to Library Board: B.J. Guillot.

Motion made by Councilmember Norton, seconded by Councilmember Toyer, to affirm the reappointment of B.J. Guillot to the Library Board. **Motion** passed unanimously (7-0).

24. Reappointment to LEOFF I Disability Board: Donna Wright and Jeff Vaughan.

Motion made by Councilmember Muller, seconded by Councilmember Norton, to affirm the reappointment Donna Wright and Jeff Vaughan to the LEOFF I Disability Board. **Motion** passed unanimously (7-0).

25. Reappointment to the Parks and Recreation Board: Mike Leighan.

Motion made by Councilmember Wright, seconded by Councilmember Vaughan, to affirm the reappointment of Mike Leighan to the Parks and Recreation Board. **Motion** passed unanimously (7-0).

26. Annual Certification of Board of Health Representative: Donna Wright.

Motion made by Councilmember Muller, seconded by Councilmember Seibert, to affirm the reappointment of Donna Wright to the Board of Health. **Motion** passed unanimously (7-0).

28. SERS Appointment: Mayor Nehring as Primary Representative and Chief Smith as Alternate.

Motion made by Councilmember Vaughan, seconded by Councilmember Seibert, to approve the appointment of Mayor Nehring as Primary Representative and Chief Smith as Alternate to the SERS Board. **Motion** passed unanimously (7-0).

29. SNOPAC Appointment

Motion made by Councilmember Norton, seconded by Councilmember Wright, to approve Chief Smith as Primary and Mayor Nehring as Secondary representative to the SNOPAC Board. **Motion** passed unanimously (7-0).

30. SWAC Appointment: Jeff Seibert as Primary and Jeff Vaughan as Alternate

Motion made by Councilmember Wright, seconded by Councilmember Toyer, to approve Jeff Seibert as the Primary and Jeff Vaughan as the Alternate appointments to the SWAC. **Motion** passed unanimously (7-0).

Mayor's Other Business:

- Happy Belated Birthday to Councilmember Toyer and Happy Birthday to Councilmember Stevens.
- Welcome to new City Attorney John Walker.
- Legislative Action Days in Olympia will be held on February 18 and 19. Councilmembers should Leah know if they are interested in going.
- NLC will be held in Washington DC in March. Leah is still waiting on flight preferences.
- He and other staff members will be meeting with a number of legislators tomorrow.
- He noted that Peter got a rave in the Rants and Raves section of the *Marysville Globe* for handing out holiday ornaments to the City Council.

Staff Business

Sandy Langdon welcomed everyone back.

Chris Holland wished everyone a Happy New Year.

Jim Ballew:

- The Tour of Lights served 2000 visitors and raised \$8000 in donations in 7 nights. He commended the volunteers from Getchell High School.
- Over the break the City received one RFP submittal for the golf course. He is hoping to review that submittal during the month of January with the help of a review committee. Councilmembers Rob Toyer, Steve Muller, and Kamille Norton expressed interest in serving on that committee.
- He is hoping to be able to give an update on the Baxter building next week.

Kevin Nielsen:

- There were a lot of storms over the break, but no calls on house or business flooding. There was some water over the roadways at 136th, 152nd, 25th, and 67th. Staff is looking to see what can be done for the future to prevent that. There was discussion about the impact of the culvert on the flooding.

- At the Public Works Committee this Friday they will be going over the GE filtration system. They will also be reviewing the 2015 Work Plan.

John Walker stated the need for an Executive Session to discuss two items regarding acquisition of property and one item involving review of employee performance. He estimated the three items would take 20 minutes with action being taken on the two real estate items.

Gloria Hirashima:

- A response went out to Ms. Possey regarding the solid waste situation.
- An L&I Inspection last year resulted in a number of minor violations. One issue involved a violation related to moving operations with the Vactor which would have had huge financial and safety impacts. Staff felt this was an unfair violation and an incorrect interpretation of the code so they appealed the violation. She was told that Public Works employees did an outstanding job presenting the case in Olympia. As a result the City received the decision that the original inspection decision was vacated. She commended Director Nielsen and his staff for their work.
- There will be a Court of Appeals hearing next week on January 13 regarding Cedar Grove.
- There will be a hearing in Federal Court this week on the Black case involving our police department.
- There is a new program for online police reporting that was just implemented a few weeks ago. There will be a presentation at the next meeting by Commander Goldman and Chief Smith.
- The Regional Fire Authority discussion is ongoing. Staff will be setting up a schedule within the next week.

Call on Councilmembers

Michael Stevens wished everyone Happy New Year and welcomed John Walker. He said the Tour of Lights was on the list of top places to see Christmas Lights in Snohomish County.

Rob Toyer had no comments.

Jeff Seibert welcomed everyone back and welcomed new City Attorney John Walker. He informed Director Nielsen that a no parking sign is down on 80th near 47th.

Donna Wright wished everyone Happy New Year and welcomed John Walker.

Kamille Norton welcomed everyone back. She appreciated the Mayor's and Chief Smith's comments in the City Scene. Welcome to John Walker.

Steve Muller wished everyone Happy New Year and welcomed John Walker.

DRAFT

Jeff Vaughan said he spent time with former Mayor Dennis Kendall at the rehabilitation center where he is chipper and happy.

Council recessed into Executive Session at 8:00 p.m. for seven minutes before reconvening into Executive Session to discuss two real estate items and one personnel matter for 20 minutes with action expected on the real estate items.

Executive Session extended for five minutes until 8:32 p.m.

Executive Session

- A. Litigation
- B. Personnel – one item, RCW 42.30.110 (1) (g)
- C. Real Estate – two items, RCW 42.30.110(1) (b)

Executive Session ended and public meeting reconvened at 8:32 p.m.

Motion made by Councilmember Muller, seconded by Seibert, to authorize the Mayor to sign purchase and sale agreement with Michael B. Crane regarding property at 5928 Sunnyside Road.

Motion made by Councilmember Seibert, seconded by Muller, to authorize the Mayor to sign the purchase and sale agreement with Glenn and Marie Kieso regarding property located at 1408 1st Street.

Adjournment

Seeing no further business Mayor Nehring adjourned the meeting at 8:32 p.m.

Approved this _____ day of _____, 2015.

Mayor
Jon Nehring

April O'Brien
Deputy City Clerk

Index #2

| | |
|---|-----------|
| Call to Order/Pledge of Allegiance/Roll Call | 7:00 p.m. |
| Approval of the Agenda | Approved |
| Committee Reports | |
| Presentations | |
| Online Police Reporting | Presented |
| Approval of Minutes | |
| Approval of December 1, 2014 City Council Work Session Minutes. | Approved |
| Approval of December 8, 2014 City Council Meeting Minutes. | Approved |
| Consent Agenda | |
| Consider Approval of the December 10, 2014 Claims in the Amount of \$266,337.63; Paid by Check Numbers 96550 through 96664 with Check Number 96364 voided. | Approved |
| Consider Approval of the December 17, 2014 Claims in the Amount of \$677,769.81; Paid by Check Numbers 96665 through 96842 with Check Numbers 94464 and 95617 Voided. | Approved |
| Consider Approval of the December 24, 2014 claims in the amount of \$648,508.69 paid by Check Numbers 96843 through 97002 with Check Numbers 89356, 94638, 96757 and 96801 voided. | Approved |
| Approve the December 19, 2014 payroll in the amount \$1,252,324.62 Check Numbers 28457 through 28498. | Approved |
| Consider Approving the Fuel Tax Grant Distribution Agreement with the Transportation Improvement Board thereby Securing Funding for the Grove Street Sidewalk Improvements Project from State Avenue to Cedar Avenue. | Approved |
| Consider Approving the Interlocal Agreement with Snohomish County for Participation in County's Overlay Program. | Approved |
| Consider Approving the Local Agency Agreement Supplement No. 1 with WSDOT in the Amount of \$12,000. | Approved |
| Consider Acceptance of the Police Evidence Building Expansion Project with Obom Construction, Starting the 60-Day Lien Filing Period for Project Closeout. | Approved |
| Consider Approval of the Agreement for Legal Services Between City of Marysville and Weed, Graafstra and Benson, Inc. P.S. | Approved |
| Consider Approval of the Professional Services Agreement between City of Marysville and Summit Law Group. | Approved |
| Consider Approval of the December 31, 2014 Claims in the Amount of \$860,164.86; Paid by Check Numbers 97003 through 97154 with Check Number 96156 Voided. | Approved |
| Consider Approval of the January 5, 2015 Payroll in the Amount of \$1,608,114.71; Paid by Check Numbers 28500 through 28547 with Check Number 28078 Voided and Reissued with Check Number 28499. | Approved |
| Review Bids | |
| Public Hearings | |
| New Business | |
| Consider Approval of a Resolution of the City of Marysville Establishing | Approved |

| | |
|---|-----------------------------------|
| <p>February 9, 2015 as the Date Upon which a Hearing Shall Be Held Before the Marysville City Council to Consider Vacation of a Portion of 25th Avenue NE, and a Stormwater Detention Pond, Located North of 172nd Street NE (SR 531) in the City of Marysville, and Consider Waiving Compensation for Said Vacation.</p> | <p>Res. No.2372</p> |
| <p>Consider Approval of an Ordinance Related To Master Planned Senior Communities By Amending Marysville Municipal Code (MMC) Section 22C.020.060 Permitted Uses; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Repealing Ordinance 2969 and Terminating the Moratorium Established therein; and Providing for Severability and Effective Date.</p> | <p>Approved Ord. No. 2980</p> |
| <p>Consider Approval of an Ordinance Related to Enactments Adopted by the Washington State Legislature by Amending Marysville Municipal Code (MMC) Sections 22C.020.060 Permitted Uses; 22C.010.070 Permitted Uses – Development Conditions; 22G.010.150 Administrative Approvals Without Notice; 22G.010.250 Vesting; 22G.010.260 Minor Revisions to Approved Development Applications; 22G.010.270 Major Revisions to Approved Residential Development Applications; 22G.010.280 Revisions not Defined as Minor or Major; 22G.010.290 Supplemental Information; 22G.010.300 Oath of Accuracy; 22G.010.310 Limitations on Refiling of Applications; 22G.010.320 Code Compliance Review – Actions Subject to Review; 22G.010.330 Decisions and Appeals; 22G.010.340 Actions Subject to Review; 22G.010.350 Notice Requirements and Comment Period; 22G.010.360 Decision or Public Hearing Required; 22G.010.370 Additional Requirements Prior to Hearing; 22G.010.380 Decision Regarding Proposal; 22G.010.390 Time Limitations; 22G.010.400 Purpose; 22G.010.410 Temporary Use Permit; 22G.010.420 Variance; 22G.010.430 Conditional Use Permit; 22G.010.440 Rezone Criteria; 22G.010.450 Rezone and Review Procedures; 22G.010.460 Home Occupation Permit; 22G.010.470 Continuing Jurisdiction; 22G.010.480 Cancellation of Decisions; 22G.010.490 Transfer of Ownership; 22g.010.500 Purpose; 22G.010.510 Authority and Application; 22G.010.520 Required Findings; 22G.010.530 Burden of Proof; 22G.010.540 Appeal Process – General Description; 22G.010.550 Appeal of Administrative Interpretations and Approvals; 22G.010.560 Judicial Appeal; 22G.030.020 General Fee Structure; 22G.090.170 Preliminary and Final Subdivision Approval – Terms; 22G.090.185 Revisions After Preliminary Subdivision Approval; Repealing 22G.090.280; Amending Section 22G.090.380 Preliminary and Final Short Subdivision Approval – Terms; and Creating New Sections 22G.090.385 Revisions After Preliminary Short Subdivision Approval; 22G.100.125 Revisions; 22G.120.390 Revision of the Official Site Plan; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Providing for Severability and Effective Date.</p> | <p>Approved Ord. No.2981</p> |

| | |
|--|-----------------------------------|
| <p>Consider Approval of an Ordinance Related to Nonconforming Situations amending Marysville Municipal Code (MMC) Sections 22C.100.030(3) and MMC 22C.100.040(3); and Amending MMC Section 22A.010.160 General Administration, Related Tracking Amendments to the City’s Uniform Development Code; Providing for Severability and Effective Date.</p> | <p>Approved Ord. No. 2982</p> |
| <p>Consider Approval of an Ordinance Related to Definitions and the Sign Code Amending Marysville Municipal Code (MMC) Sections 22A.020.140 “Monument Sign” Definition; 22C.160.170(10) Development Standards – Freestanding Signs; 22C.160.180(5) Development Standards – Electronic Message, Animated and Changeable Copy Signs; 22C.160.240(1)(B) Nonconforming Signs; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City’s Uniform Development Code; Providing for Severability and Effective Date.</p> | <p>Approved Ord. No. 2983</p> |
| <p>Consider Approval of an Ordinance Related to the City’s Animal Control Regulations; and Adding a New Section 10.04.335 Beekeeping to MMC Chapter 10.04 Animal Control.</p> | <p>Approved Ord. No. 2984</p> |
| <p>Consider Approval of an Ordinance Amending Marysville Municipal Code (MMC) Sections 10.04.460 Regarding Commercial Kennels and Pet Shops – General Conditions; MMC 22A.020.120 by Amending the Definition for “Kennel, Commercial”; MMC 22A.020.170 by Adding a Definition for “Pet Daycare”; MMC 22C.020.060 Regarding Table of Permitted Uses; MMC 22C.020.070 Regarding Permitted Uses – Development Conditions; and Amending MMC 22A.010.160 Regarding General Administration, Related to Tracking Amendments to the City’s Unified Development Code.</p> | <p>Approved Ord. No. 2985</p> |
| <p>Consider Approval of an Ordinance Amending MMC 22D.020.090(5); MMC 22D.020.100 Regarding Parks, Recreation, Open Space and Trail Impact Fees and Mitigation; MMC 22D.040.050; MMC 22d.040.60 Regarding School Impact Fees and Mitigation; MMC 22D.030.070 Regarding Traffic Impact Fees and Mitigation; MMC 22A.010.160 Regarding General Administration, Related to Tracking Amendments to the City’s Unified Development Code; Providing for Severability and Effective Date.</p> | <p>Approved Ord. No.2986</p> |
| <p>Consider Approval of an Ordinance Related to the State Environmental Policy Act (SEPA) Amending Marysville Municipal Code (MMC) Section 22E.030.090; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City’s Uniform Development Code; Providing for Severability and Effective Date.</p> | <p>Approved Ord. No.2987</p> |
| <p>Consider Approval of an Ordinance Related to Wireless Communication Facilities (WCF) Amending Marysville Municipal Code (MMC) Section 22C.250.030 Adding Subsection (7) Related to WCF SEPA Exemptions; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City’s Uniform Development Code; Providing for Severability and Effective Date.</p> | <p>Approved Ord. No. 2988</p> |
| <p>Consider Approval of an Ordinance Related to Critical Areas Management – Article IV ‘Geologic Hazards’ Amending Marysville Municipal Code</p> | <p>Approved Ord. No. 2989</p> |

| | |
|---|-----------|
| (MMC) Sections 22E.010.280; 22E.010.300(2); 22E.010.310(E) And Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Providing for Severability and Effective Date. | |
| Consider Approval of the Continuation of the Performance Award Program for Non-Represented Staff. | Approved |
| Mayor's Business | |
| Staff Business | |
| Call on Councilmembers | |
| Adjournment | 7:58 |
| Executive Session | 8:07 |
| Personnel – one item | |
| Reconvenement | 8:20 p.m. |
| Adjournment | 8:20 p.m. |

COUNCIL*DRAFT*
MINUTES

Regular Meeting
January 12, 2015

Call to Order / Pledge of Allegiance

Mayor Nehring called the meeting to order at 7:00 p.m. and led those present in the Pledge of Allegiance.

Roll Call

Chief Administrative Officer Hirashima gave the roll call. The following staff and councilmembers were in attendance.

Mayor: Jon Nehring

Council: Steve Muller, Kamille Norton, Jeff Seibert, Michael Stevens, Rob Toyer, Jeff Vaughan, and Donna Wright

Absent: None

Also Present: Chief Administrative Officer Gloria Hirashima, Finance Director Sandy Langdon, Police Chief Rick Smith, City Attorney John Walker, Public Works Director Kevin Nielsen, Parks and Recreation Director Jim Ballew, and Recording Secretary Laurie Hugdahl.

Motion made by Councilmember Toyer, seconded by Councilmember Norton, to approve the agenda. **Motion** passed unanimously (7-0).

Committee Reports

Councilmember Muller reported on the January 8 Library Board meeting where they reviewed the previous year. The library had a great year last year with a ton of activity. He commented that there is a new robotics program and you can check out a kit and build a robot on site.

Councilmember Stevens reported on the Marysville Fire District Board of Directors meeting. He stated that the search for a new chief is underway. He was elected as chair person for the Fire District Board of Directors.

Councilmember Seibert reported on the Public Works meeting where they reviewed projects completed last year as well as anticipated projects for this year. They also received a presentation on the ZENON membrane water filtration system.

Presentations

A. Online Police Reporting

Commander Goldman gave an overview of www.mycrimereport.us. This is an online system run through SnoPac. The type of crimes that may be reported online are low severity crimes involving property only. This system cannot be used for crimes where there are suspects, witnesses, or evidence. Commander Goldman reviewed the process for making a report online. He explained that this system provides an extra mechanism for citizens to report low level crimes. It captures crimes that may otherwise go unreported and may provide a minimal reduction in public disclosure requests. This is already built into the New World System. It also allows officers to stay on the streets.

Councilmember Muller asked about turnaround time from the time the report is submitted. Commander Goldman said the Police have 72 hours to respond to the citizen, but generally do it within 48 hours. The report simultaneously is sent to SnoPac and the appropriate agency.

Council President Vaughan asked if the response is automated. Commander Goldman replied that it is, but it includes an incident number and a case number.

Audience Participation

Approval of Minutes

1. Approval of December 1, 2014, City Council Work Session Minutes.

Motion made by Councilmember Muller, seconded by Councilmember Wright, to approve the December 1, 2014, City Council Work Session Minutes. **Motion** passed unanimously (7-0).

2. Approval of December 8, 2014 City Council Meeting Minutes.

Council President Vaughan referred to page 4 of 11 under his comments and noted that he had commented that the Chamber used to be the “Voice **of Business** in Marysville”

Councilmembers Wright and Toyer indicated they would not be voting since they were not at the meeting.

Motion made by Councilmember Muller, seconded by Councilmember Stevens, to approve the December 8, 2014 City Council Meeting Minutes with the change as noted by Council President Vaughan. **Motion** passed unanimously (5-0) with Councilmembers Wright and Toyer abstaining.

Consent

3. Consider Approval of the December 10, 2014 Claims in the Amount of \$266,337.63; Paid by Check Numbers 96550 through 96664 with Check Number 96364 voided.
4. Consider Approval of the December 17, 2014 Claims in the Amount of \$677,769.81; Paid by Check Numbers 96665 through 96842 with Check Numbers 94464 and 95617 Voided.
5. Consider Approval of the December 24, 2014 claims in the amount of \$648,508.69 paid by Check Numbers 96843 through 97002 with Check Numbers 89356, 94638, 96757 and 96801 voided.
6. Approve the December 19, 2014 payroll in the amount \$1,252,324.62 Check Numbers 28457 through 28498.
7. Consider Approving the Fuel Tax Grant Distribution Agreement with the Transportation Improvement Board thereby Securing Funding for the Grove Street Sidewalk Improvements Project from State Avenue to Cedar Avenue.
8. Consider Approving the Interlocal Agreement with Snohomish County for Participation in County's Overlay Program.
9. Consider Approving the Local Agency Agreement Supplement No. 1 with WSDOT in the Amount of \$12,000.
10. Consider Acceptance of the Police Evidence Building Expansion Project with Obom Construction, Starting the 60-Day Lien Filing Period for Project Closeout.
22. Consider Approval of the Agreement for Legal Services Between City of Marysville and Weed, Graafstra and Benson, Inc. P.S.
27. Consider Approval of the Professional Services Agreement between City of Marysville and Summit Law Group.
31. Consider Approval of the December 31, 2014 Claims in the Amount of \$860,164.86; Paid by Check Numbers 97003 through 97154 with Check Number 96156 Voided.
32. Consider Approval of the January 5, 2015 Payroll in the Amount of \$1,608,114.71; Paid by Check Numbers 28500 through 28547 with Check Number 28078 Voided and Reissued with Check Number 28499.

Motion made by Councilmember Norton, seconded by Councilmember Stevens, to approve Consent Agenda items 3-10, 22, 27, 31, and 32. **Motion** passed unanimously (7-0).

Review Bids

Public Hearings

New Business

11. Consider Approval of a Resolution of the City of Marysville Establishing February 9, 2015 as the Date Upon which a Hearing Shall Be Held Before the Marysville City Council to Consider Vacation of a Portion of 25th Avenue NE, and a Stormwater Detention Pond, Located North of 172nd Street NE (SR 531) in the City of Marysville, and Consider Waiving Compensation for Said Vacation.

Senior Planner Cheryl Dungan stated there was no new staff information.

Motion made by Councilmember Stevens, seconded by Councilmember Muller, to approve Resolution No.2372. **Motion** passed unanimously (7-0).

12. Consider Approval of an Ordinance Related To Master Planned Senior Communities By Amending Marysville Municipal Code (MMC) Section 22C.020.060 Permitted Uses; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Repealing Ordinance 2969 and Terminating the Moratorium Established therein; and Providing for Severability and Effective Date.

Senior Planner Cheryl Dungan stated there was no new staff information.

Motion made by Council President Vaughan, seconded by Councilmember Wright, to approve Ordinance No. 2980. **Motion** passed unanimously (7-0).

13. Consider Approval of an Ordinance Related to Enactments Adopted by the Washington State Legislature by Amending Marysville Municipal Code (MMC) Sections 22C.020.060 Permitted Uses; 22C.010.070 Permitted Uses – Development Conditions; 22G.010.150 Administrative Approvals Without Notice; 22G.010.250 Vesting; 22G.010.260 Minor Revisions to Approved Development Applications; 22G.010.270 Major Revisions to Approved Residential Development Applications; 22G.010.280 Revisions not Defined as Minor or Major; 22G.010.290 Supplemental Information; 22G.010.300 Oath of Accuracy; 22G.010.310 Limitations on Refiling of Applications; 22G.010.320 Code Compliance Review – Actions Subject to Review; 22G.010.330 Decisions and Appeals; 22G.010.340 Actions Subject to Review; 22G.010.350 Notice Requirements and Comment Period; 22G.010.360 Decision or Public Hearing Required; 22G.010.370 Additional Requirements Prior to Hearing; 22G.010.380 Decision Regarding Proposal; 22G.010.390 Time Limitations; 22G.010.400

Purpose; 22G.010.410 Temporary Use Permit; 22G.010.420 Variance; 22G.010.430 Conditional Use Permit; 22G.010.440 Rezone Criteria; 22G.010.450 Rezone and Review Procedures; 22G.010.460 Home Occupation Permit; 22G.010.470 Continuing Jurisdiction; 22G.010.480 Cancellation of Decisions; 22G.010.490 Transfer of Ownership; 22g.010.500 Purpose; 22G.010.510 Authority and Application; 22G.010.520 Required Findings; 22G.010.530 Burden of Proof; 22G.010.540 Appeal Process – General Description; 22G.010.550 Appeal of Administrative Interpretations and Approvals; 22G.010.560 Judicial Appeal; 22G.030.020 General Fee Structure; 22G.090.170 Preliminary and Final Subdivision Approval – Terms; 22G.090.185 Revisions After Preliminary Subdivision Approval; Repealing 22G.090.280; Amending Section 22G.090.380 Preliminary and Final Short Subdivision Approval – Terms; and Creating New Sections 22G.090.385 Revisions After Preliminary Short Subdivision Approval; 22G.100.125 Revisions; 22G.120.390 Revision of the Official Site Plan; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City’s Uniform Development Code; Providing for Severability and Effective Date.

Senior Planner Cheryl Dungan stated there was no new staff information.

Motion made by Councilmember Muller, seconded by Councilmember Stevens, to approve Ordinance No.2981. **Motion** passed unanimously (7-0).

14. Consider Approval of an Ordinance Related to Nonconforming Situations amending Marysville Municipal Code (MMC) Sections 22C.100.030(3) and MMC 22C.100.040(3); and Amending MMC Section 22A.010.160 General Administration, Related Tracking Amendments to the City’s Uniform Development Code; Providing for Severability and Effective Date.

Senior Planner Cheryl Dungan stated there was no new staff information.

Motion made by Councilmember Wright, seconded by Council President Vaughan, to approve Ordinance No. 2982. **Motion** passed unanimously (7-0).

15. Consider Approval of an Ordinance Related to Definitions and the Sign Code Amending Marysville Municipal Code (MMC) Sections 22A.020.140 “Monument Sign” Definition; 22C.160.170(10) Development Standards – Freestanding Signs; 22C.160.180(5) Development Standards – Electronic Message, Animated and Changeable Copy Signs; 22C.160.240(1)(B) Nonconforming Signs; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City’s Uniform Development Code; Providing for Severability and Effective Date.

Senior Planner Cheryl Dungan stated there was no new staff information.

Motion made by Councilmember Stevens, seconded by Councilmember Muller, to approve Ordinance No. 2983. **Motion** passed unanimously (7-0).

16. Consider Approval of an Ordinance Related to the City's Animal Control Regulations; and Adding a New Section 10.04.335 Beekeeping to MMC Chapter 10.04 Animal Control.

Associate Planner Angela Gemmer said she spoke to the party who had initially expressed the concern about beekeeping. She is generally supportive of the Ordinance, although she would prefer greater setbacks.

Motion made by Councilmember Muller, seconded by Councilmember Toyer, to approve Ordinance No. 2984. **Motion** passed unanimously (7-0).

17. Consider Approval of an Ordinance Amending Marysville Municipal Code (MMC) Sections 10.04.460 Regarding Commercial Kennels and Pet Shops – General Conditions; MMC 22A.020.120 by Amending the Definition for “Kennel, Commercial”; MMC 22A.020.170 by Adding a Definition for “Pet Daycare”; MMC 22C.020.060 Regarding Table of Permitted Uses; MMC 22C.020.070 Regarding Permitted Uses – Development Conditions; and Amending MMC 22A.010.160 Regarding General Administration, Related to Tracking Amendments to the City's Unified Development Code.

Associate Planner Angela Gemmer had no new information on this item.

Motion made by Council President Vaughan, seconded by Councilmember Toyer, to approve Ordinance No. 2985. **Motion** passed unanimously (7-0).

18. Consider Approval of an Ordinance Amending MMC 22D.020.090(5); MMC 22D.020.100 Regarding Parks, Recreation, Open Space and Trail Impact Fees and Mitigation; MMC 22D.040.050; MMC 22d.040.60 Regarding School Impact Fees and Mitigation; MMC 22D.030.070 Regarding Traffic Impact Fees and Mitigation; MMC 22A.010.160 Regarding General Administration, Related to Tracking Amendments to the City's Unified Development Code; Providing for Severability and Effective Date.

Associate Planner Angela Gemmer had no new information on this item.

Motion made by Councilmember Norton, seconded by Councilmember Muller, to approve Ordinance No.2986. **Motion** passed unanimously (7-0).

19. Consider Approval of an Ordinance Related to the State Environmental Policy Act (SEPA) Amending Marysville Municipal Code (MMC) Section 22E.030.090; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Providing for Severability and Effective Date.

Senior Planner Cheryl Dungan had no new information on this item.

Motion made by Councilmember Stevens, seconded by Councilmember Norton, to approve Ordinance No.2987. **Motion** passed unanimously (7-0).

20. Consider Approval of an Ordinance Related to Wireless Communication Facilities (WCF) Amending Marysville Municipal Code (MMC) Section 22C.250.030 Adding Subsection (7) Related to WCF SEPA Exemptions; and Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Providing for Severability and Effective Date.

Senior Planner Cheryl Dungan had no new information on this item.

Motion made by Councilmember Wright, seconded by Council President Vaughan, to approve Ordinance No. 2988. **Motion** passed unanimously (7-0).

21. Consider Approval of an Ordinance Related to Critical Areas Management – Article IV 'Geologic Hazards' Amending Marysville Municipal Code (MMC) Sections 22E.010.280; 22E.010.300(2); 22E.010.310(E) And Amending MMC Section 22A.010.160 General Administration, Related to Tracking Amendments to the City's Uniform Development Code; Providing for Severability and Effective Date.

Senior Planner Cheryl Dungan had no new information on this item.

Motion made by Councilmember Muller, seconded by Councilmember Norton, to approve Ordinance No. 2989. **Motion** passed unanimously (7-0).

33. Consider Approval of the Continuation of the Performance Award Program for Non-Represented Staff.

CAO Hirashima stated this is a program the Council initiated and approved in 2013. Generally speaking, this has been a good program which recognizes achievement that goes above and beyond the normal excellence of employees.

Councilmember Muller asked if the employees have standard expectations for their job class. CAO Hirashima replied that they do. Councilmember Muller stated that he likes the program.

Motion made by Councilmember Wright, seconded by Councilmember Stevens, to approve the Continuation of the Performance Award Program for Non-Represented Staff. **Motion** passed unanimously (7-0).

Legal

Mayor's Business

Mayor Nehring:

- Marysville is hosting the Snohomish County Cities meeting at the golf course on Thursday. This is typically a large meeting because there is voting on committee assignments. He encouraged all councilmembers to attend.
- Economic Alliance Snohomish County (EASC) Legislative Kickoff last week went very well.
- Dr. Macy will be coming to town to work with the Tribes and the community regarding the MPHS tragedy. There will be a kickoff dinner on Monday from 6 to 9 p.m. Mayor Nehring will not be able to attend, but would appreciate someone taking his place.

Staff Business

Chief Smith:

- Welcome back from the holidays.
- He reported good news for 2014. The goal last year was to reduce crime by 20% in two years. He is very proud to report that SODA area crime has gone down by 19.62%. Overall crime for the city (excluding theft) is down by almost 8%. The Regional Property Crimes Unit with the County, Lake Stevens, and funding from Stillaguamish Tribes made three arrests last week; one of these was major and some major investigations are underway.
- He gave an update on the New World System. He believes it will go live on June 9.
- He discussed the benefit of the online reporting system (www.MyCrimeReport.us) and how implementation of this will happen.
- Mayor Nehring commented that the decrease in crime in the SODA area is a very big deal. He congratulated Chief Smith on the accomplishments.

Sandy Langdon:

- The TBDs bylaws have a regularly scheduled meeting next Monday, but there is no business on the agenda. There was consensus to cancel the meeting.
- There is a Finance Committee meeting scheduled for January 21.

John Walker:

- He stated all his interactions with staff and the community have been extremely positive and he is looking forward to moving forward with the work of the City.
- He stated the need for an Executive Session to discuss one item regarding an annual review of the city administrator with no action requested.

Kevin Nielsen:

- Public Works received a safety grant for signal improvements throughout the City in the amount of \$422,000. He will bring a list of projects to the next Council meeting.
- Go Ducks and Go Hawks!

Jim Ballew had no comments.

Gloria Hirashima:

- Staff is continuing to work on the video channel. Jim Ballew is acting as host for the programming. They are currently doing spots for all the departments. High school classes are doing the filming for free. This will be a nice way to use the cable channel.
- She gave an update on a couple lawsuits that have closed out in the past week.

Call on Councilmembers

Kamille Norton:

- The Parks office looks great with the new desk and carpet.
- She is excited about the online reporting system for crimes.

Steve Muller had no comments.

Rob Toyer congratulated Chief Smith and the Police department.

Michael Stevens:

- He congratulated Chief Smith for the decrease in crime.
- Thanks for the update on the New World System.
- He has received two positive comments on the service Cheryl Dungan has provided.
- He won't be able to attend the Snohomish County Cities dinner.

Jeff Seibert had no comments.

Donna Wright:

- She echoed congratulations on crime statistics.
- She asked for confirmation that there will be a Public Safety meeting on January 28. Staff confirmed that there will be.

Jeff Vaughan:

- He utilized the online crime reporting system in December and thinks it is a good move.
- He commended police for swiftly dealing with a situation in his neighborhood.

Mayor Nehring recessed the meeting at 7:58 until 8:07 p.m. At 8:08 pm the meeting reconvened for a 15-minute Executive Session with no action to discuss one personnel item.

Executive Session

- A. Litigation
- B. Personnel – one item, RCW 42.30.110 (1)(g)

C. Real Estate

Executive session ended and public meeting reconvened at 8:20 p.m.

Adjournment

Seeing no further business Mayor Nehring adjourned the meeting at 8:20 p.m.

Approved this _____ day of _____, 2015.

Mayor
Jon Nehring

April O'Brien
Deputy City Clerk

Index #3

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: February 9, 2015

| | | |
|---|-----------------|-----|
| AGENDA ITEM: Claims | AGENDA SECTION: | |
| PREPARED BY: Sandy Langdon, Finance Director | AGENDA NUMBER: | |
| ATTACHMENTS: Claims Listings | APPROVED BY: | |
| | MAYOR | CAO |
| BUDGET CODE: | AMOUNT: | |

Please see attached.

RECOMMENDED ACTION:

The Finance and Executive Departments recommend City Council approve the **January 21, 2015** claims in the amount of **\$1,206,110.87** paid by **Check No.'s 97469 through 97587 with Check No.'s 96241, 97159 & 97459 voided.**

COUNCIL ACTION:

**CLAIMS
FOR
PERIOD-1**

I, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE **CLAIMS** IN THE AMOUNT OF **\$1,206,110.87 PAID BY CHECK NO.'S 97469 THROUGH 97587 WITH CHECK NO.'S 96241, 97159 & 97459 VOIDED** ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF MARYSVILLE, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND TO CERTIFY SAID CLAIMS.

AUDITING OFFICER

DATE

MAYOR

DATE

WE, THE UNDERSIGNED COUNCIL MEMBERS OF MARYSVILLE, WASHINGTON DO HEREBY APPROVE FOR PAYMENT THE ABOVE MENTIONED **CLAIMS** ON THIS **9th DAY OF FEBRUARY 2015.**

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

**CITY OF MARYSVILLE
 INVOICE LIST
 FOR INVOICES FROM 1/16/2015 TO 1/21/2015**

| <u>CHK #</u> | <u>VENDOR</u> | <u>ITEM DESCRIPTION</u> | <u>ACCOUNT DESCRIPTION</u> | <u>ITEM AMOUNT</u> |
|--------------|------------------------|--------------------------------|----------------------------|--------------------|
| 97469 | REVENUE, DEPT OF | SALES AND USE TAXES-DEC 2014 | PRO-SHOP | -40.67 |
| | REVENUE, DEPT OF | | CITY CLERK | 0.57 |
| | REVENUE, DEPT OF | | INFORMATION SERVICES | 13.65 |
| | REVENUE, DEPT OF | | POLICE ADMINISTRATION | 19.41 |
| | REVENUE, DEPT OF | | RECREATION SERVICES | 63.38 |
| | REVENUE, DEPT OF | | WATER/SEWER OPERATION | 277.55 |
| | REVENUE, DEPT OF | | CITY STREETS | 401.59 |
| | REVENUE, DEPT OF | | ER&R | 1,302.27 |
| | REVENUE, DEPT OF | | GOLF COURSE | 1,719.54 |
| | REVENUE, DEPT OF | | GENERAL FUND | 3,145.52 |
| | REVENUE, DEPT OF | | STORM DRAINAGE | 5,465.24 |
| | REVENUE, DEPT OF | | SOLID WASTE OPERATIONS | 28,583.22 |
| | REVENUE, DEPT OF | | UTIL ADMIN | 52,481.58 |
| 97470 | AGRICULTURE, DEPT OF | PESTICIDE LICENSE RENEWAL (6) | PARK & RECREATION FAC | 198.00 |
| 97471 | ALBERTSONS | TOUR OF LIGHTS/HOLIDAY/EMP APP | COMMUNITY EVENTS | 13.03 |
| | ALBERTSONS | | COMMUNITY EVENTS | 18.28 |
| | ALBERTSONS | | RECREATION SERVICES | 25.88 |
| | ALBERTSONS | | RECREATION SERVICES | 29.97 |
| | ALBERTSONS | | PERSONNEL ADMINISTRATIO | 133.14 |
| | ALBERTSONS | | PRO-SHOP | 143.10 |
| 97472 | ANDERSON, ERIK | UB 870120000001 7908 50TH DR N | WATER/SEWER OPERATION | 195.06 |
| 97473 | ARAMARK UNIFORM | UNIFORM SERVICE | MAINTENANCE | 11.15 |
| 97474 | BANK OF AMERICA | SUPPLY REIMBURSEMENT | OFFICE OPERATIONS | 31.72 |
| 97475 | BANK OF AMERICA | TRAVEL REIMBURSEMENT | EXECUTIVE ADMIN | 3.00 |
| | BANK OF AMERICA | | EXECUTIVE ADMIN | 125.00 |
| 97476 | BANK OF AMERICA | EMP APPRECIATION REIMBURSEMENT | PERSONNEL ADMINISTRATIO | 130.08 |
| 97477 | BANK OF AMERICA | TRAVEL REIMBURSEMENT | POLICE ADMINISTRATION | 31.13 |
| | BANK OF AMERICA | | POLICE ADMINISTRATION | 240.06 |
| 97478 | BANK OF AMERICA | ADVERTISING REIMBURSEMENT | ENGR-GENL | 300.00 |
| | BANK OF AMERICA | | TRANSPORTATION MANAGEM | 350.00 |
| 97479 | BANK OF AMERICA | TRAVEL REIMBURSEMENT | POLICE TRAINING-FIREARMS | -90.00 |
| | BANK OF AMERICA | | POLICE ADMINISTRATION | 59.17 |
| | BANK OF AMERICA | | POLICE PATROL | 1,166.82 |
| | BANK OF AMERICA | | POLICE TRAINING-FIREARMS | 1,227.22 |
| 97480 | BANK OF AMERICA | BANK ANALYSIS FEE-DEC 2014 | NON-DEPARTMENTAL | 26,807.22 |
| | BANK OF AMERICA | | UTIL ADMIN | 26,807.22 |
| 97481 | BILLING DOCUMENT SPE | MAINTENANCE FEES | UTILITY BILLING | 30.00 |
| 97482 | BLAIR, JACK | UTILITY TAX REBATE | NON-DEPARTMENTAL | 39.58 |
| 97483 | BOB BARKER COMPANY | JANITORIAL SUPPLIES | DETENTION & CORRECTION | 726.89 |
| 97484 | BRANNON, PAM | UB 131140000001 4716 118TH ST | WATER/SEWER OPERATION | 25.67 |
| 97485 | BURCH, MYRNA | UTILITY TAX REBATE | NON-DEPARTMENTAL | 58.91 |
| 97486 | BUTCHER, MARCUS | | NON-DEPARTMENTAL | 87.21 |
| 97487 | CALLAHAN, KALEB | MEAL REIMBURSEMENT | GENERAL SERVICES - OVERF | 14.00 |
| 97488 | CAPITAL ONE COMMERCIAL | SUPPLY REIMBURSEMENT | PRO-SHOP | 38.45 |
| | CAPITAL ONE COMMERCIAL | | MAINT OF GENL PLANT | 108.79 |
| 97489 | CAPTAIN DIZZYS EXXON | CAR WASHES | POLICE PATROL | 72.00 |
| 97490 | CELLEBRITE USA, INC. | LICENSE RENEWAL | INFORMATION SERVICES | -35.11 |
| | CELLEBRITE USA, INC. | | COMPUTER SERVICES | 434.11 |
| 97491 | CERUTI, PAT | UTILITY TAX REBATE | NON-DEPARTMENTAL | 32.24 |
| 97492 | CHILD ADVOCACY CTR | CHILD INTERVIEW SPECIALIST-4TH | POLICE INVESTIGATION | 2,818.10 |
| 97493 | CONSOLIDATED TECH | IGN MONTHLY CHARGE | OFFICE OPERATIONS | 195.00 |
| 97494 | CORPORATE OFFICE SPL | COPY PAPER | WATER DIST MAINS | 139.05 |
| 97495 | COURIER, RICHARD & T | UTILITY TAX REBATE | NON-DEPARTMENTAL | 86.84 |
| 97496 | DANIELS, DON | | NON-DEPARTMENTAL | 60.45 |
| 97497 | DB SECURE SHRED | SHREDDING SERVICE | CITY CLERK | 211.51 |
| 97498 | DICKS TOWING | TOWING EXPENSE-MP15-0010 | POLICE PATROL | 43.52 |
| | DICKS TOWING | TOWING EXPENSE-MP15-0041 | POLICE PATROL | 43.52 |
| | DICKS TOWING | TOWING EXPENSE-MP15-0158 | POLICE PATROL | 43.52 |
| | DICKS TOWING | TOWING EXPENSE-MP15-0191 | POLICE PATROL | 43.52 |
| | DICKS TOWING | TOWING EXPENSE-MP15-0201 | POLICE PATROL | 43.52 |
| 97499 | DUBEAU, AMY | REIMBURSE NOTARY FEE | LEGAL - PROSECUTION | 30.00 |

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 1/16/2015 TO 1/21/2015

| <u>CHK #</u> | <u>VENDOR</u> | <u>ITEM DESCRIPTION</u> | <u>ACCOUNT DESCRIPTION</u> | <u>ITEM AMOUNT</u> |
|--------------|----------------------|--------------------------------|----------------------------|--------------------|
| 97500 | E&E LUMBER | RETURN LUMBER | PARK & RECREATION FAC | -17.65 |
| | E&E LUMBER | GRAFFITI SUPPLIES | COMMUNITY DEVELOPMENT- | 12.54 |
| | E&E LUMBER | LUMBER | PARK & RECREATION FAC | 622.70 |
| 97501 | EHRHARDT, SANDRA | UTILITY TAX REBATE | NON-DEPARTMENTAL | 68.56 |
| 97502 | ERICKSON, IRENE | | NON-DEPARTMENTAL | 34.15 |
| 97503 | EVERETT STAMP WORKS | STAMP | LEGAL-GENL | 23.97 |
| | EVERETT STAMP WORKS | | OFFICE OPERATIONS | 57.45 |
| 97504 | FIRST AMERICAN TITLE | SUBDIVISION/PLAT CERTIFICATE | WATER CAPITAL PROJECTS | 382.20 |
| 97505 | FRANE, DANIEL & JEAN | UTILITY TAX REBATE | NON-DEPARTMENTAL | 131.31 |
| 97506 | FRONTIER COMMUNICATI | PHONE CHARGES | CRIME PREVENTION | 7.66 |
| | FRONTIER COMMUNICATI | | ANIMAL CONTROL | 7.66 |
| | FRONTIER COMMUNICATI | | COMMUNITY CENTER | 7.66 |
| | FRONTIER COMMUNICATI | | SOLID WASTE CUSTOMER EX | 7.66 |
| | FRONTIER COMMUNICATI | | PURCHASING/CENTRAL STOF | 7.66 |
| | FRONTIER COMMUNICATI | | CITY CLERK | 15.32 |
| | FRONTIER COMMUNICATI | | LEGAL-GENL | 15.32 |
| | FRONTIER COMMUNICATI | | FACILITY MAINTENANCE | 15.32 |
| | FRONTIER COMMUNICATI | | YOUTH SERVICES | 22.98 |
| | FRONTIER COMMUNICATI | | PERSONNEL ADMINISTRATIO | 22.98 |
| | FRONTIER COMMUNICATI | | EXECUTIVE ADMIN | 30.64 |
| | FRONTIER COMMUNICATI | | GOLF ADMINISTRATION | 30.64 |
| | FRONTIER COMMUNICATI | | FINANCE-GENL | 38.30 |
| | FRONTIER COMMUNICATI | | LEGAL - PROSECUTION | 38.30 |
| | FRONTIER COMMUNICATI | | RECREATION SERVICES | 38.30 |
| | FRONTIER COMMUNICATI | | STORM DRAINAGE | 38.30 |
| | FRONTIER COMMUNICATI | | EQUIPMENT RENTAL | 38.30 |
| | FRONTIER COMMUNICATI | | COMPUTER SERVICES | 38.33 |
| | FRONTIER COMMUNICATI | ACCT #36065774950927115 | STREET LIGHTING | 45.47 |
| | FRONTIER COMMUNICATI | ACCT #36065836350725085 | UTIL ADMIN | 46.27 |
| | FRONTIER COMMUNICATI | | COMMUNITY DEVELOPMENT- | 46.27 |
| | FRONTIER COMMUNICATI | PHONE CHARGES | PARK & RECREATION FAC | 53.63 |
| | FRONTIER COMMUNICATI | | POLICE INVESTIGATION | 61.29 |
| | FRONTIER COMMUNICATI | | UTILITY BILLING | 61.29 |
| | FRONTIER COMMUNICATI | ACCT #36065831360617105 | MUNICIPAL COURTS | 64.91 |
| | FRONTIER COMMUNICATI | ACCT #36065827660617105 | MUNICIPAL COURTS | 65.06 |
| | FRONTIER COMMUNICATI | PHONE CHARGES | ENGR-GENL | 68.95 |
| | FRONTIER COMMUNICATI | | POLICE ADMINISTRATION | 68.95 |
| | FRONTIER COMMUNICATI | | GENERAL SERVICES - OVERH | 68.95 |
| | FRONTIER COMMUNICATI | | MUNICIPAL COURTS | 84.27 |
| | FRONTIER COMMUNICATI | | OFFICE OPERATIONS | 84.27 |
| | FRONTIER COMMUNICATI | | WASTE WATER TREATMENT F | 91.93 |
| | FRONTIER COMMUNICATI | | DETENTION & CORRECTION | 99.59 |
| | FRONTIER COMMUNICATI | | UTIL ADMIN | 145.55 |
| | FRONTIER COMMUNICATI | | COMMUNITY DEVELOPMENT- | 168.53 |
| | FRONTIER COMMUNICATI | | POLICE PATROL | 337.07 |
| 97507 | GILLETTE, DON | UTILITY TAX REBATE | UTIL ADMIN | 38.45 |
| | GILLETTE, DON | | NON-DEPARTMENTAL | 43.65 |
| | GILLETTE, DON | | UTIL ADMIN | 143.30 |
| 97508 | GRIFFEN, CHRIS | PUBLIC DEFENDER | LEGAL - PUBLIC DEFENSE | 300.00 |
| 97509 | GUY ASHMORE | UB 691201100000 12011 35TH AVE | WATER/SEWER OPERATION | 396.92 |
| 97510 | HATLOE'S DECORATING | KBCC RESTROOM FLOOR MATERIAL | COMMUNITY CENTER | 3,978.08 |
| 97511 | HAUGSVAR, ED | UTILITY TAX REBATE | NON-DEPARTMENTAL | 45.42 |
| 97512 | HD FOWLER COMPANY | HYDRANT AND PARTS | WATER CAPITAL PROJECTS | 2,458.93 |
| 97513 | HD SUPPLY WATERWORKS | WATCHDOG REPAIR PARTS | WATER CROSS CNTL | 153.70 |
| 97514 | HIETBRINK, RUSSELL & | UB 650960000001 9818 63RD DR N | WATER/SEWER OPERATION | 15.01 |
| 97515 | HOME DEPOT | BULB | PARK & RECREATION FAC | 9.81 |
| 97516 | HOORN, ROXANNE | RENTAL DEPOSIT REFUND | GENERAL FUND | 100.00 |
| 97517 | HOWELL, BRIAN | UB 650640800000 6408 107TH PL | WATER/SEWER OPERATION | 21.64 |
| 97518 | JONES, JANICE M | UTILITY TAX REBATE | NON-DEPARTMENTAL | 19.79 |
| 97519 | JONES, MARY A | UB 971350000002 1617 10TH ST | WATER/SEWER OPERATION | 164.08 |
| 97520 | KENNEDY/JENKS CONSUL | PROFESSIONAL SERVICES | WATER CAPITAL PROJECTS | 14,351.01 |

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 1/16/2015 TO 1/21/2015

| <u>CHK #</u> | <u>VENDOR</u> | <u>ITEM DESCRIPTION</u> | <u>ACCOUNT DESCRIPTION</u> | <u>ITEM AMOUNT</u> |
|--------------|----------------------|--------------------------------|----------------------------|--------------------|
| 97521 | KERNS, RICHARD | UB 810498000000 7010 ARMAR RD | WATER/SEWER OPERATION | 78.74 |
| 97522 | KMD ARCHITECTS | PROFESSIONAL SERVICES | FACILITY REPLACEMENT | 17,363.00 |
| 97523 | LASTING IMPRESSIONS | BASKETBALL SHIRTS | RECREATION SERVICES | 4,567.64 |
| 97524 | LIAN, DALE E | UTILITY TAX REBATE | NON-DEPARTMENTAL | 42.94 |
| 97525 | LICENSING, DEPT OF | CARLSON, GILBERT (ORIGINAL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | CIRCLE, SHAYE (ORIGINAL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | COOK, KRISTI (ORIGIANL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | GROSS, LARRY (ORIGINAL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | MASSEY, ROBERT (RENEWAL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | MCGEATHEY, ALEXANDER (ORIGINAL | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | MORLING, MATTHEW (ORIGINAL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | PETIT, DAVID (RENEWAL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | SKALICKY, KAYLA (RENEWAL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | SWEET, DAVID (RENEWAL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | VOLSON, LYTTONN (ORIGINAL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | WARK, CATHERINE (ORIGINAL) | GENERAL FUND | 18.00 |
| | LICENSING, DEPT OF | BLAND, PHILLIP (LT RENEWAL) | GENERAL FUND | 21.00 |
| 97526 | LUCE, PATRICIA | UTILITY TAX REBATE | NON-DEPARTMENTAL | 62.05 |
| 97527 | MARYSVILLE AWARDS | NAMEPLATE | CITY COUNCIL | 20.13 |
| | MARYSVILLE AWARDS | AWARD | PARK & RECREATION FAC | 166.45 |
| 97528 | MCCAIN TRAFFIC SPLY | POWER SUPPLIES | TRANSPORTATION MANAGEM | 576.64 |
| 97529 | MDE INC | PROFESSIONAL SERVICES | COMMUNITY CENTER | 2,165.00 |
| 97530 | MELLO, CARI | UTILITY TAX REBATE | NON-DEPARTMENTAL | 14.48 |
| 97531 | MIRANDA, TONYA | WFOA MEMBERSHIP REIMBURSEMENT | UTIL ADMIN | 50.00 |
| 97532 | MPOA | REISSUE LOST PAYROLL CHECK | PAYROLL CLEARING | 5,646.06 |
| 97533 | NEGRETTE, LORENZO | UTILITY TAX REBATE | NON-DEPARTMENTAL | 26.35 |
| 97534 | NOLF, LOUISE | | NON-DEPARTMENTAL | 48.74 |
| 97535 | OFFICE DEPOT | OFFICE SUPPLIES | POLICE PATROL | 62.31 |
| | OFFICE DEPOT | | POLICE PATROL | 82.90 |
| | OFFICE DEPOT | | OFFICE OPERATIONS | 143.49 |
| | OFFICE DEPOT | | POLICE PATROL | 214.24 |
| | OFFICE DEPOT | | OFFICE OPERATIONS | 282.50 |
| 97536 | PAYMENTUS | TRANSACTION FEES | UTILITY BILLING | 13,878.71 |
| 97537 | PEACE OF MIND | MINUTE TAKING SERVICE | CITY CLERK | 111.60 |
| 97538 | POSEY, REGINA | UTILITY TAX REBATE | NON-DEPARTMENTAL | 52.66 |
| 97539 | PRINGLE, HARRY | | UTIL ADMIN | 38.45 |
| | PRINGLE, HARRY | | NON-DEPARTMENTAL | 42.92 |
| | PRINGLE, HARRY | | UTIL ADMIN | 143.30 |
| 97540 | PUD | ACCT #2024-6102-6 | MAINT OF GENL PLANT | 33.60 |
| | PUD | ACCT #2009-7395-6 | SEWER LIFT STATION | 55.31 |
| | PUD | ACCT #2031-9973-2 | TRANSPORTATION MANAGEM | 92.81 |
| | PUD | ACCT #2004-4880-1 | TRANSPORTATION MANAGEM | 101.09 |
| | PUD | ACCT #2020-0351-3 | PUMPING PLANT | 138.12 |
| | PUD | ACCT #2021-7595-6 | TRAFFIC CONTROL DEVICES | 139.58 |
| | PUD | 2202-9862-4 | STREET LIGHTING | 174.69 |
| | PUD | ACCT #2016-2888-0 | WASTE WATER TREATMENT F | 346.00 |
| | PUD | ACCT #2054-1976-5 | PUBLIC SAFETY BLDG. | 427.63 |
| | PUD | ACCT #2048-2122-7 | TRAFFIC CONTROL DEVICES | 528.32 |
| | PUD | ACCT #2016-7563-4 | WASTE WATER TREATMENT F | 748.19 |
| | PUD | ACCT #2015-8728-4 | WASTE WATER TREATMENT F | 856.55 |
| | PUD | ACCT #2011-4725-3 | PUMPING PLANT | 1,587.68 |
| | PUD | ACCT #2021-7733-3 | MAINT OF GENL PLANT | 1,712.59 |
| | PUD | ACCT #2003-0347-7 | WATER FILTRATION PLANT | 1,945.03 |
| | PUD | ACCT #2016-3968-9 | MAINT OF GENL PLANT | 3,499.90 |
| 97541 | RICOH USA, INC. | PRINTER RENT | POLICE PATROL | 194.66 |
| | RICOH USA, INC. | | POLICE PATROL | 194.66 |
| 97542 | ROBINETT MANAGEMENT | UB 983021740000 3021 74TH DR N | WATER/SEWER OPERATION | 272.82 |
| 97543 | RODARTE CONST INC | HYDRANT METER REFUND | WATER-UTILITIES/ENVIRONM | -667.15 |
| | RODARTE CONST INC | | WATER/SEWER OPERATION | 1,150.00 |
| 97544 | RYAN, LYUDMILA | UB 830144000001 6826 71ST ST N | WATER/SEWER OPERATION | 150.00 |
| 97545 | SALVADALENA, STEFANI | UTILITY TAX REBATE | NON-DEPARTMENTAL | 13.51 |

**CITY OF MARYSVILLE
INVOICE LIST**

FOR INVOICES FROM 1/16/2015 TO 1/21/2015

| <u>CHK #</u> | <u>VENDOR</u> | <u>ITEM DESCRIPTION</u> | <u>ACCOUNT DESCRIPTION</u> | <u>ITEM AMOUNT</u> |
|--------------|----------------------|--------------------------------|----------------------------|--------------------|
| 97546 | SASS, LYNN | RENTAL FEES AND DEPOSIT REFUND | PARKS-RECREATION | 85.00 |
| | SASS, LYNN | | GENERAL FUND | 100.00 |
| 97547 | SCHOOLCRAFT, RANDY | REIMBURSE MEAL | SEWER MAIN COLLECTION | 14.00 |
| 97548 | SCORE | INMATE HOUSING-DEC 2014 | DETENTION & CORRECTION | 30,435.00 |
| 97549 | SCOTT, WALLACE | UTILITY TAX REBATE | NON-DEPARTMENTAL | 88.97 |
| 97550 | SEVERSON, KELLY | | NON-DEPARTMENTAL | 45.98 |
| 97551 | SIMS, JAMES & WANDA | | NON-DEPARTMENTAL | 115.62 |
| 97552 | SNO CO FINANCE | COMPLETE BUILD UP OF PATROL CA | EQUIPMENT RENTAL | 3,862.19 |
| | SNO CO FINANCE | | EQUIPMENT RENTAL | 3,862.19 |
| | SNO CO FINANCE | | EQUIPMENT RENTAL | 4,071.56 |
| 97553 | SNO CO JUVENILE | BAIL POSTED | GENERAL FUND | 100.00 |
| 97554 | SNO CO TREASURER | CRIME VICTIM/WITNESS FUNDS | CRIME VICTIM | 1,056.48 |
| 97555 | SNOPAC | ACCESS ASSESSMENT | COMMUNICATION CENTER | 3,427.89 |
| | SNOPAC | DISPATCH SERVICES | COMMUNICATION CENTER | 78,009.35 |
| 97556 | SOUND PUBLISHING | LEGAL ADS | CITY CLERK | 26.85 |
| 97557 | SOUND PUBLISHING | | WATER CAPITAL PROJECTS | 103.80 |
| 97558 | SOUND PUBLISHING | | CITY CLERK | 191.27 |
| 97559 | SOUND PUBLISHING | | COMMUNITY DEVELOPMENT- | 219.11 |
| 97560 | STAPLES | OFFICE SUPPLIES | COMMUNITY DEVELOPMENT- | 208.95 |
| 97561 | STATE PATROL | BACKGROUND CHECKS | PERSONNEL ADMINISTRATIO | 200.00 |
| 97562 | STCLAIR, MAE | UTILITY TAX REBATE | NON-DEPARTMENTAL | 82.63 |
| 97563 | STEEN, WALTER | | NON-DEPARTMENTAL | 24.53 |
| 97564 | STORK, RICHARD | | NON-DEPARTMENTAL | 34.25 |
| 97565 | STULTS, LARRY | | NON-DEPARTMENTAL | 105.33 |
| 97566 | SUPPORT REGISTRY | CHILD SUPPORT ENFORCEMENT | GENERAL FUND | 6.30 |
| 97567 | SWICK-LAFAVE, JULIE | REIMBURSE JAIL SUPPLY PURCHASE | DETENTION & CORRECTION | 56.75 |
| 97568 | THORLEIFSON, JOANNE | UTILITY TAX REBATE | NON-DEPARTMENTAL | 93.89 |
| 97569 | TRANS SYSTEMS | PAY ESTIMATE #4 | GMA - STREET | 18,330.19 |
| 97570 | UNITED PARCEL SERVIC | SHIPPING EXPENSE | POLICE PATROL | 39.54 |
| 97571 | UTILITIES UNDERGROUN | EXCAVATION NOTICES | UTILITY LOCATING | 328.02 |
| 97572 | VALENTINSEN, HILDA | UTILITY TAX REBATE | UTIL ADMIN | 38.45 |
| | VALENTINSEN, HILDA | | NON-DEPARTMENTAL | 47.17 |
| | VALENTINSEN, HILDA | | UTIL ADMIN | 143.30 |
| 97573 | VAN DAM'S ABBEY | SLATE, BASE AND FLOOR TILES | MAINT OF GENL PLANT | 22,359.16 |
| 97574 | VERIZON | WIRELESS CHARGES | PURCHASING/CENTRAL STOF | 24.15 |
| | VERIZON | | ANIMAL CONTROL | 26.39 |
| | VERIZON | | GOLF ADMINISTRATION | 48.30 |
| | VERIZON | | FACILITY MAINTENANCE | 48.30 |
| | VERIZON | | UTILITY BILLING | 48.90 |
| | VERIZON | | CRIME PREVENTION | 50.54 |
| | VERIZON | | MUNICIPAL COURTS | 54.42 |
| | VERIZON | | FINANCE-GENL | 54.42 |
| | VERIZON | | PERSONNEL ADMINISTRATIO | 54.42 |
| | VERIZON | | YOUTH SERVICES | 79.17 |
| | VERIZON | | WATER SUPPLY MAINS | 80.08 |
| | VERIZON | | EQUIPMENT RENTAL | 102.72 |
| | VERIZON | | OFFICE OPERATIONS | 105.56 |
| | VERIZON | | LEGAL - PROSECUTION | 108.84 |
| | VERIZON | | EXECUTIVE ADMIN | 115.40 |
| | VERIZON | | LEGAL-GENL | 147.10 |
| | VERIZON | | ENGR-GENL | 151.02 |
| | VERIZON | | PARK & RECREATION FAC | 151.02 |
| | VERIZON | | RECREATION SERVICES | 175.17 |
| | VERIZON | | SOLID WASTE OPERATIONS | 193.20 |
| | VERIZON | | DETENTION & CORRECTION | 208.88 |
| | VERIZON | | COMMUNITY DEVELOPMENT- | 233.21 |
| | VERIZON | | STORM DRAINAGE | 313.77 |
| | VERIZON | | POLICE INVESTIGATION | 379.30 |
| | VERIZON | | COMPUTER SERVICES | 379.90 |
| | VERIZON | | GENERAL SERVICES - OVERT | 444.23 |
| | VERIZON | | POLICE ADMINISTRATION | 620.67 |

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 1/16/2015 TO 1/21/2015

| <u>CHK #</u> | <u>VENDOR</u> | <u>ITEM DESCRIPTION</u> | <u>ACCOUNT DESCRIPTION</u> | <u>ITEM AMOUNT</u> |
|--------------|----------------------|--------------------------------|----------------------------|--------------------|
| 97574 | VERIZON | WIRELESS CHARGES | WASTE WATER TREATMENT F | 698.28 |
| | VERIZON | | UTIL ADMIN | 1,132.42 |
| | VERIZON | | POLICE PATROL | 3,529.34 |
| 97575 | WA STATE TREASURER | PUBLIC SAFETY & BLDG REVENUE | GENERAL FUND | 112.50 |
| | WA STATE TREASURER | | GENERAL FUND | 58,861.48 |
| 97576 | WALLACE, MCKENZIE | UB 570697500002 17904 29TH AVE | WATER/SEWER OPERATION | 93.83 |
| 97577 | WASHINGTON STATE UNV | PESTICIDE RECERT CLASS (4) | PARK & RECREATION FAC | 480.00 |
| 97578 | WCIA | TBD-LIABLILITY & PROPERTY PROG | GENL GVRNMNT SERVICES | 2,500.00 |
| | WCIA | LIABILITY & PROPERTY PROGRAM A | ER&R | 5,006.00 |
| | WCIA | | GOLF COURSE | 31,468.00 |
| | WCIA | | GARBAGE | 52,208.00 |
| | WCIA | | CITY STREETS | 65,081.00 |
| | WCIA | | GENERAL FUND | 239,582.00 |
| | WCIA | | WATER/SEWER OPERATION | 321,830.00 |
| 97579 | WEST PAYMENT CENTER | WEST INFORMATION CHARGES | POLICE INVESTIGATION | 205.12 |
| 97580 | WESTERN FACILITIES | JANITORIAL SUPPLIES | DETENTION & CORRECTION | 537.73 |
| 97581 | WHATCOM CO PARK & | RANGE RENTAL/STORAGE 2015 | POLICE TRAINING-FIREARMS | 7,058.00 |
| 97582 | WHIDBEY ISLAND BANK | RETAINAGE OF PAY ESTIMATE #3 | UTILITY CONSTRUCTION | 237.50 |
| 97583 | WILLIAMS, JOHN M | UB 840018000002 6922 73RD DR N | WATER/SEWER OPERATION | 104.82 |
| 97584 | WINFIELD SOLUTIONS | PESTICIDES | MAINTENANCE | 317.18 |
| | WINFIELD SOLUTIONS | | MAINTENANCE | 1,031.21 |
| 97585 | WOODBURY, VIOLET | UTILITY TAX REBATE | NON-DEPARTMENTAL | 26.11 |
| 97586 | WOODS, KYLE | REIMBURSE STORAGE REELS, PAINT | ENGR-GENL | 103.89 |
| 97587 | WSTOA | TEAM MEMBERSHIP DUES | POLICE PATROL | 100.00 |

WARRANT TOTAL:

1,206,850.09

REASON FOR VOIDS:
 UNCLAIMED PROPERTY
 INITIATOR ERROR
 WRONG VENDOR
 CHECK LOST/DAMAGED IN MAIL

| | | |
|---------------|-----------------|----------|
| CHECK # 96241 | INITIATOR ERROR | (396.92) |
| CHECK # 97159 | INITIATOR ERROR | (195.06) |
| CHECK # 97459 | INITIATOR ERROR | (147.24) |

1,206,110.87

Index #4

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: February 9, 2015

| | | |
|---|-----------------|-----|
| AGENDA ITEM: Claims | AGENDA SECTION: | |
| PREPARED BY: Sandy Langdon, Finance Director | AGENDA NUMBER: | |
| ATTACHMENTS: Claims Listings | APPROVED BY: | |
| | MAYOR | CAO |
| BUDGET CODE: | AMOUNT: | |

Please see attached.

RECOMMENDED ACTION:

The Finance and Executive Departments recommend City Council approve the **January 28, 2015** claims in the amount of **\$346,526.53** paid by **Check No.'s 97588 through 97638 with no Check No. voided.**

COUNCIL ACTION:

CLAIMS
FOR
PERIOD-1

I, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE **CLAIMS** IN THE AMOUNT OF **\$346,526.53 PAID BY CHECK NO.'S 97588 THROUGH 97638 WITH NO CHECK NO. VOIDED** ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF MARYSVILLE, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND TO CERTIFY SAID CLAIMS.

AUDITING OFFICER DATE

MAYOR DATE

WE, THE UNDERSIGNED COUNCIL MEMBERS OF MARYSVILLE, WASHINGTON DO HEREBY APPROVE FOR PAYMENT THE ABOVE MENTIONED **CLAIMS** ON THIS **9th DAY OF FEBRUARY 2015.**

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 1/22/2015 TO 1/28/2015

| <u>CHK #</u> | <u>VENDOR</u> | <u>ITEM DESCRIPTION</u> | <u>ACCOUNT DESCRIPTION</u> | <u>ITEM AMOUNT</u> |
|--------------|----------------------|--------------------------------|----------------------------|--------------------|
| 97588 | ARAMARK UNIFORM | UNIFORM SERVICE | EQUIPMENT RENTAL | 26.33 |
| 97589 | ASM AFFILIATES, INC. | PROFESSIONAL SERVICES | GMA - STREET | 1,534.50 |
| 97590 | BANK OF AMERICA | SUPPLY REIMBURSEMENT | COMPUTER SERVICES | 0.82 |
| | BANK OF AMERICA | | UTILITY BILLING | 13.98 |
| | BANK OF AMERICA | | COMPUTER SERVICES | 36.00 |
| 97591 | BANK OF AMERICA | | EXECUTIVE ADMIN | 100.00 |
| | BANK OF AMERICA | | PERSONNEL ADMINISTRATIO | 157.64 |
| | BANK OF AMERICA | | LEGAL-GENL | 225.00 |
| | BANK OF AMERICA | | EXECUTIVE ADMIN | 292.46 |
| | BANK OF AMERICA | | CITY COUNCIL | 300.00 |
| 97592 | BANK OF NEW YORK | ADMIN FEE MARLID7114 | INTEREST & OTHER DEBT SE | 52.71 |
| 97593 | BICKFORD FORD | SEAL, BEARINGS AND AXLE SHAFT | EQUIPMENT RENTAL | 323.24 |
| 97594 | BLUMENTHAL UNIFORMS | UNIFORM-MAPLES | POLICE PATROL | 1,061.62 |
| 97595 | BOWEN, CHRISTINA | RENTAL DEPOSIT REFUND | GENERAL FUND | 100.00 |
| 97596 | BRINKS INC | ARMORED TRUCK SERVICE | COMMUNITY DEVELOPMENT- | 109.75 |
| | BRINKS INC | | UTIL ADMIN | 109.75 |
| | BRINKS INC | | GOLF ADMINISTRATION | 192.66 |
| | BRINKS INC | | UTILITY BILLING | 196.34 |
| | BRINKS INC | | POLICE ADMINISTRATION | 369.51 |
| | BRINKS INC | | MUNICIPAL COURTS | 369.52 |
| 97597 | CALIBRE PRESS, INC. | SEMINAR-JONES | POLICE TRAINING-FIREARMS | 209.00 |
| 97598 | COOP SUPPLY | REAR TRACK WHEEL | MAINT OF GENL PLANT | 16.96 |
| | COOP SUPPLY | PROPANE | EQUIPMENT RENTAL | 25.70 |
| | COOP SUPPLY | WHEEL CARRIER | MAINT OF GENL PLANT | 107.16 |
| 97599 | CORRECTIONS, DEPT OF | INMATE MEALS | DETENTION & CORRECTION | 3,728.21 |
| 97600 | DANAN, ANNA | RENTAL FEES/DEPOSIT REUND | PARKS-RECREATION | 85.00 |
| | DANAN, ANNA | | GENERAL FUND | 100.00 |
| 97601 | DATEC, INC | SECTOR PAPER | POLICE PATROL | 527.13 |
| 97602 | DB SECURE SHRED | MONTHLY SHREDDING SERVICE | CITY CLERK | 7.46 |
| | DB SECURE SHRED | | FINANCE-GENL | 7.46 |
| | DB SECURE SHRED | | UTILITY BILLING | 7.47 |
| | DB SECURE SHRED | | PROBATION | 16.79 |
| | DB SECURE SHRED | | MUNICIPAL COURTS | 50.38 |
| 97603 | DIGITAL DOLPHIN SUPP | TONER CREDIT | POLICE ADMINISTRATION | -39.70 |
| | DIGITAL DOLPHIN SUPP | TONER | GENERAL FUND | -11.17 |
| | DIGITAL DOLPHIN SUPP | | YOUTH SERVICES | 138.04 |
| 97604 | E&E LUMBER | DOOR PULL | PUBLIC SAFETY BLDG. | 4.69 |
| | E&E LUMBER | CUT SNIP | FACILITY MAINTENANCE | 14.61 |
| | E&E LUMBER | TAPE, SANDPAPER AND SOCKET ADA | ADMIN FACILITIES | 23.24 |
| | E&E LUMBER | DOWNSPOUT AND MORTAR | LIBRARY-GENL | 25.05 |
| | E&E LUMBER | ELECTRICAL CORD | TRANSPORTATION MANAGEM | 28.19 |
| | E&E LUMBER | LUMBER | ADMIN FACILITIES | 52.17 |
| | E&E LUMBER | LEVER, DOORSTOPS, PUTTY AND PL | ADMIN FACILITIES | 110.21 |
| | E&E LUMBER | LIGHT BULBS | PUBLIC SAFETY BLDG. | 130.07 |
| 97605 | EVERETT MUNICIPAL | BAIL POSTED | GENERAL FUND | 600.00 |
| 97606 | EVERETT, CITY OF | ANIMAL SHELTER FEES | ANIMAL CONTROL | 2,410.00 |
| 97607 | FBINAA WASHINGTON | FBI DUES | POLICE ADMINISTRATION | 90.00 |
| | FBINAA WASHINGTON | | POLICE ADMINISTRATION | 90.00 |
| 97608 | FRED MEYER | JEANS-WATSON | UTIL ADMIN | 97.89 |
| 97609 | FRONTIER COMMUNICATI | ACCT #36065125170927115 | STREET LIGHTING | 45.47 |
| | FRONTIER COMMUNICATI | ACCT #425-397-6325-031998-5 | PARK & RECREATION FAC | 52.33 |
| | FRONTIER COMMUNICATI | ACCT #36065962121015935 | MAINT OF GENL PLANT | 64.91 |
| | FRONTIER COMMUNICATI | ACCT #36065976670111075 | OFFICE OPERATIONS | 64.91 |
| | FRONTIER COMMUNICATI | ACCT #36065191230801065 | WATER FILTRATION PLANT | 91.76 |
| | FRONTIER COMMUNICATI | ACCT #25300981920624965 | SEWER LIFT STATION | 93.22 |
| 97610 | GOVCONNECTION INC | PORTABLE HD | COMPUTER SERVICES | 184.86 |
| | GOVCONNECTION INC | MISC PERIPHERAL REPLACEMENTS | COMPUTER SERVICES | 254.84 |
| | GOVCONNECTION INC | MEMORY REPLACEMENTS | COMPUTER SERVICES | 422.47 |
| | GOVCONNECTION INC | DVD BURNER | COMPUTER SERVICES | 434.41 |
| 97611 | GREENSHIELDS | BALL VALVES | EQUIPMENT RENTAL | 60.28 |
| 97612 | HESS, AMY | REIMBURSE MILEAGE | COMMUNITY DEVELOPMENT- | 74.04 |

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 1/22/2015 TO 1/28/2015

| <u>CHK #</u> | <u>VENDOR</u> | <u>ITEM DESCRIPTION</u> | <u>ACCOUNT DESCRIPTION</u> | <u>ITEM AMOUNT</u> |
|--------------|----------------------|--------------------------------|----------------------------|--------------------|
| 97613 | MACKIE, TRACEY | INSTRUCTOR SERVICES | COMMUNITY CENTER | 135.00 |
| | MACKIE, TRACEY | | COMMUNITY CENTER | 667.00 |
| 97614 | MARYSVILLE PRINTING | ENVELOPES | PERSONNEL ADMINISTRATIO | 61.45 |
| | MARYSVILLE PRINTING | SOCCER AND SPRING EVENT FLYERS | RECREATION SERVICES | 647.68 |
| | MARYSVILLE PRINTING | | RECREATION SERVICES | 647.69 |
| 97615 | NATIONAL BARRICADE | THERMOPLASTIC PADS | TRAFFIC CONTROL DEVICES | 78.19 |
| 97616 | OFFICE DEPOT | OFFICE SUPPLIES | UTIL ADMIN | 9.69 |
| | OFFICE DEPOT | | COMPUTER SERVICES | 26.26 |
| | OFFICE DEPOT | | PROPERTY TASK FORCE | 27.81 |
| | OFFICE DEPOT | | COMPUTER SERVICES | 28.93 |
| | OFFICE DEPOT | | PROPERTY TASK FORCE | 43.78 |
| | OFFICE DEPOT | | PROPERTY TASK FORCE | 150.40 |
| | OFFICE DEPOT | BATTERIES | POLICE PATROL | 179.47 |
| | OFFICE DEPOT | OFFICE SUPPLIES | POLICE PATROL | 246.95 |
| | OFFICE DEPOT | | PROPERTY TASK FORCE | 635.41 |
| | OFFICE DEPOT | | PROPERTY TASK FORCE | 829.59 |
| 97617 | PACIFIC POWER BATTER | BATTERIES | ER&R | 173.00 |
| 97618 | PARTS STORE, THE | PAINT | SOLID WASTE OPERATIONS | 90.05 |
| | PARTS STORE, THE | FILTERS, ANITFREEZE AND TAIL L | ER&R | 182.59 |
| 97619 | PLATT ELECTRIC | LIGHT BULBS | ADMIN FACILITIES | 55.29 |
| | PLATT ELECTRIC | TEST METER, CASE, TIES AND CON | TRANSPORTATION MANAGEN | 567.88 |
| 97620 | PUD | ACCT #2023-7865-9 | MAINT OF GENL PLANT | 33.82 |
| | PUD | ACCT #2016-7213-6 | SEWER LIFT STATION | 62.09 |
| | PUD | ACCT #2010-6528-1 | PARK & RECREATION FAC | 72.67 |
| | PUD | ACCT #2006-5074-5 | TRANSPORTATION MANAGEN | 76.53 |
| | PUD | ACCT #2030-0516-0 | STREET LIGHTING | 101.37 |
| | PUD | ACCT #2027-2901-8 | TRANSPORTATION MANAGEN | 117.17 |
| | PUD | ACCT #2008-2727-7 | TRANSPORTATION MANAGEN | 133.97 |
| | PUD | ACCT #2023-6854-4 | TRANSPORTATION MANAGEN | 136.87 |
| | PUD | ACCT #2021-4311-1 | TRANSPORTATION MANAGEN | 156.45 |
| | PUD | ACCT #2024-6354-3 | SEWER LIFT STATION | 187.25 |
| | PUD | ACCT #2025-5745-0 | STREET LIGHTING | 202.95 |
| | PUD | ACCT #2032-3100-6 | TRANSPORTATION MANAGEN | 358.64 |
| | PUD | ACCT #2023-6855-1 | PARK & RECREATION FAC | 482.99 |
| | PUD | ACCT #2020-0032-9 | PARK & RECREATION FAC | 595.06 |
| | PUD | ACCT #2010-2160-7 | PARK & RECREATION FAC | 1,239.15 |
| | PUD | ACCT #2008-2454-8 | MAINT OF GENL PLANT | 1,298.25 |
| | PUD | ACCT #2010-2169-8 | PARK & RECREATION FAC | 1,435.08 |
| | PUD | ACCT #2005-8648-5 | SEWER LIFT STATION | 1,718.59 |
| | PUD | ACCT #2014-6303-1 | PUBLIC SAFETY BLDG. | 3,477.57 |
| | PUD | ACCT #2015-7792-1 | PUMPING PLANT | 3,750.80 |
| | PUD | ACCT #2020-0499-0 | LIBRARY-GENL | 4,591.16 |
| | PUD | ACCT #2020-7500-8 | WASTE WATER TREATMENT F | 7,382.15 |
| | PUD | ACCT #2014-2063-5 | WASTE WATER TREATMENT F | 13,637.67 |
| | PUD | ACCT #2017-2118-0 | WASTE WATER TREATMENT F | 14,425.70 |
| 97621 | PUGET SOUND SECURITY | KEYS | EQUIPMENT RENTAL | 14.58 |
| | PUGET SOUND SECURITY | | STREET LIGHTING | 17.14 |
| 97622 | SEATTLE TIMES, THE | EMPLOYMENT AD | EXECUTIVE ADMIN | 433.33 |
| | SEATTLE TIMES, THE | | ENGR-GENL | 1,089.46 |
| 97623 | SENTINEL OFFENDER SE | ELEC HOME MONITORING | DETENTION & CORRECTION | 1,074.43 |
| 97624 | SERS | SERS 2015 ASSESSMENT | COMMUNICATION CENTER | 183,909.00 |
| 97625 | SHERWIN WILLIAMS | PAINT AND SUPPLIES | COURT FACILITIES | 245.26 |
| 97626 | SNO CO AUDITOR | VOTER REGISTRATION (36595) | FINANCIAL & RECORDS SERV | 71,940.49 |
| 97627 | SOUND SAFETY | RAINGEAR | ER&R | 83.69 |
| | SOUND SAFETY | JEANS-BUELL, J | UTIL ADMIN | 98.12 |
| | SOUND SAFETY | GLOVES | ER&R | 322.05 |
| 97628 | STAPLES | OFFICE SUPPLIES | PARK & RECREATION FAC | 8.04 |
| | STAPLES | | PARK & RECREATION FAC | 16.27 |
| | STAPLES | | PERSONNEL ADMINISTRATIO | 22.82 |
| | STAPLES | | PARK & RECREATION FAC | 168.81 |
| | STAPLES | | PERSONNEL ADMINISTRATIO | 311.14 |

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 1/22/2015 TO 1/28/2015

| <u>CHK #</u> | <u>VENDOR</u> | <u>ITEM DESCRIPTION</u> | <u>ACCOUNT DESCRIPTION</u> | <u>ITEM AMOUNT</u> |
|--------------|----------------------|--------------------------------|----------------------------|--------------------|
| 97628 | STAPLES | OFFICE SUPPLIES | MUNICIPAL COURTS | 349.29 |
| 97629 | STATE PATROL | FINGERPRINT ID SERVICES | COMMUNITY DEVELOPMENT- | 26.00 |
| | STATE PATROL | | GENERAL FUND | 577.50 |
| 97630 | SUMMIT LAW GROUP | GENERAL LABOR PROFESSIONAL SER | PERSONNEL ADMINISTRATIO | 5,756.00 |
| 97631 | TOCCO, LEAH | REIMBURSE PLAQUE AND FRAMING | EXECUTIVE ADMIN | 455.82 |
| 97632 | TRANSPORTATION, DEPT | PROJECT COSTS | GMA - STREET | 584.02 |
| 97633 | UNITED PARCEL SERVIC | SHIPPING EXPENSE | GMA - STREET | 71.10 |
| | UNITED PARCEL SERVIC | | POLICE PATROL | 190.02 |
| 97634 | VOLUNTEERS OF AMERIC | TRAINING-SCOTT | EQUIPMENT RENTAL | 190.00 |
| 97635 | WHITE CAP CONSTRUCT | TUBE, RAPID SET, SEALANT AND D | SIDEWALKS MAINTENANCE | 166.07 |
| 97636 | WIDE FORMAT COMPANY | MAINTENANCE AGREEMENT KIP PRIN | UTIL ADMIN | 106.62 |
| 97637 | WITHOUT BORDERS | INSTRUCTOR SERVICES | RECREATION SERVICES | 535.50 |
| 97638 | WOLTERS KLUWER LAW | APA BASIC GUIDE TO PAYROLL | FINANCE-GENL | 538.56 |

WARRANT TOTAL:

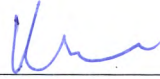
346,526.53

REASON FOR VOIDS:
 UNCLAIMED PROPERTY
 INITIATOR ERROR
 WRONG VENDOR
 CHECK LOST/DAMAGED IN MAIL

Index #6

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 2/9/2015

| | |
|--|--|
| AGENDA ITEM: Petition to the State Utilities & Transportation Commission – Railroad Crossing Improvements State Avenue 116 th Street NE to 136 th Street NE Corridor Improvements | |
| PREPARED BY: Patrick Gruenhagen, Project Manager | DIRECTOR APPROVAL:  |
| DEPARTMENT: Public Works - Engineering | |
| ATTACHMENTS: <ul style="list-style-type: none"> ⇒ Attachment 1: Aerial Photo – Proposed Crossing Improvements ⇒ Attachment 2: RCW 81.53.030, “Petition for Crossing – Hearing – Order” ⇒ Attachment 3: Petition to Construct or Reconstruct a Highway-Rail Grade Crossing | |
| BUDGET CODE: 30500030.563000 R1404 | AMOUNT: \$0 |
| SUMMARY: | |

The City is now poised to move forward and advertise its *State Avenue 116th Street NE to 136th Street NE Corridor Improvement Project* for construction in a matter of weeks. Among other things, one key focus of the project will be to improve the at-grade rail crossing of State Avenue that is situated just to the north of 116th Street NE. Commonly referred to as the “Arlington Spur,” this crossing will be widened from three (3) lanes to five (5) lanes, consistent with the City’s own work to the north and south. (See Attachment 1)

In order for this work to proceed, two conditions must first be met. First, the City must enter into an agreement with BNSF Railway Company — an item that is being brought forward separately and concurrently for City Council consideration. Second, pursuant to RCW 81.53.030, enclosed herein as Attachment 2, the City must successfully “petition” the Washington State Utilities and Transportation Commission (“UTC”) to gain its approval for the crossing improvements.

Public Works staff have met and coordinated with UTC representatives in order to brief them on the City’s plans, and understand that the proposed crossing improvements are perceived to be acceptable, and in the public interest. Accordingly, staff recommends that Council authorize the Mayor to sign the enclosed petition (Attachment 3) so that it can be passed on to UTC for further processing and final approval.

| |
|--|
| RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to sign the attached Petition to Construct or Reconstruct A Highway-Rail Grade Crossing. |
|--|

Attachment 1
Proposed City of Marysville
Improvements to State Avenue /
"Arlington Spur" Grade Crossing
Railroad Milepost 0.17



State Avenue to be Widened
Eastward from 3 lanes (existing) to
5 lanes + sidewalk

Crossing Surface to be Extended
Eastward to Accommodate Widening

Existing RR Cantilever
to be Relocated

RCW 81.53.030**Attachment 2****Petition for crossing — Hearing — Order.**

Whenever a railroad company desires to cross a highway or railroad at grade, it shall file a written petition with the commission setting forth the reasons why the crossing cannot be made either above or below grade. Whenever the legislative authority of a county, or the municipal authorities of a city, or the state officers authorized to lay out and construct state roads, or the state parks and recreation commission, desire to extend a highway across a railroad at grade, they shall file a written petition with the commission, setting forth the reasons why the crossing cannot be made either above or below grade. Upon receiving the petition, the commission shall immediately investigate it, giving at least ten days' notice to the railroad company and the county or city affected thereby, of the time and place of the investigation, to the end that all parties interested may be present and heard. If the highway involved is a state road or parkway, the secretary of transportation or the state parks and recreation commission shall be notified of the time and place of hearing. The evidence introduced shall be reduced to writing and be filed by the commission. If it finds that it is not practicable to cross the railroad or highway either above or below grade, the commission shall enter a written order in the cause, either granting or denying the right to construct a grade crossing at the point in question. The commission may provide in the order authorizing a grade crossing, or at any subsequent time, that the railroad company shall install and maintain proper signals, warnings, flaggers, interlocking devices, or other devices or means to secure the safety of the public and its employees. In respect to existing railroad grade crossings over highways the construction of which grade crossings was accomplished other than under a commission order authorizing it, the commission may in any event require the railroad company to install and maintain, at or near each crossing, on both sides of it, a sign known as the sawbuck crossing sign with the lettering "Railroad Crossing" inscribed thereon with a suitable inscription indicating the number of tracks. The sign shall be of standard design conforming to specifications furnished by the Washington state department of transportation.

[2013 c 23 § 303; 1984 c 7 § 373; 1961 c 14 §81.53.030 . Prior: 1959 c 283 § 1; 1955 c 310 § 3; prior: 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.100.]

Notes:

Severability -- 1984 c 7: See note following RCW 47.01.141.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

| | | |
|------------------------|---|-----------------------------|
| |) | DOCKET NO. TR- |
| |) | |
| Marysville, Washington |) | PETITION TO CONSTRUCT OR |
| _____ |) | RECONSTRUCT A HIGHWAY-RAIL |
| Petitioner, |) | GRADE CROSSING |
| |) | |
| vs. |) | |
| BNSF Railway Company |) | |
| _____ |) | |
| Respondent |) | |
| |) | USDOT CROSSING NO.: 92-077P |
| |) | |
| |) | |

Prior to submitting a Petition to **Construct** a highway-rail grade crossing and install an inter-tie between a Highway Signal and a Railroad Crossing Signal System to the Washington Utilities and Transportation Commission (UTC), State Environmental Protection Act (SEPA) requirements must be met. Washington Administrative Code (WAC) 197-11-865 (2) requires:

All actions of the utilities and transportation commission under statutes administered as of December 12, 1975, are exempted, except the following:

(2) Authorization of the openings or closing of any highway/railroad grade crossing, or the direction of physical connection of the line of one railroad with that of another;

Please attach sufficient documentation to demonstrate that the SEPA requirement has been fulfilled. For additional information on SEPA requirements contact the Department of Ecology.

The Petitioner asks the Washington Utilities and Transportation Commission to approve construction or reconstruction of a highway-rail grade crossing.

- Construction
 Reconstruction

Section 1 – Petitioner's Information

| |
|---|
| <p><u>Jon Nehring, Mayor</u> Petitioner</p> |
| <p>Signature</p> |
| <p><u>1049 State Avenue</u> Street Address</p> |
| <p><u>Marysville, Washington 98270</u> City, State and Zip Code</p> |
| <p>Mailing Address, if different than the street address</p> |
| <p><u>Patrick Gruenhagen</u> Contact Person Name</p> |
| <p><u>360.363.8279 / pgruenhagen@marysvillewa.gov</u> Contact Phone Number and E-mail Address</p> |

Section 2 – Respondent's Information

| |
|---|
| <p>Respondent</p> |
| <p><u>BNSF Railway Company</u> Street Address</p> |
| <p><u>2454 Occidental Avenue South, Suite 2D</u> City, State and Zip Code</p> |
| <p><u>Seattle, WA 98134</u> Mailing Address, if different than the street address</p> |
| <p><u>Rick Wagner, Manager Public Projects</u> Contact Person Name</p> |
| <p><u>206.625.6152</u> Contact Phone Number and E-mail Address</p> |

Section 3 – Proposed or Existing Crossing Location

1. Existing highway/roadway State Avenue

2. Existing railroad BNSF "Arlington Spur" track

3. Location of proposed crossing:
 Located in the NE 1/4 of the NW 1/4 of Sec. 09, Twp. 30, Range 05 W.M.

4. GPS location, if known Latitude: 48.1054 Longitude: -122.1773

5. Railroad mile post (nearest tenth) 0.17

6. City Marysville County Snohomish

Section 4 – Proposed or Existing Crossing Information

1. Railroad company BNSF Railway Company

2. Type of railroad at crossing Common Carrier Logging Industrial
 Passenger Excursion

3. Type of tracks at crossing Main Line Siding or Spur

4. Number of tracks at crossing 1

5. Average daily train traffic, freight 2
 Authorized freight train speed 10mph Operated freight train speed 10mph

6. Average daily train traffic, passenger 0
 Authorized passenger train speed 0mph Operated passenger train speed 0mph

7. Will the proposed crossing eliminate the need for one or more existing crossings?
 Yes No X

8. If so, state the distance and direction from the proposed crossing.

9. Does the petitioner propose to close any existing crossings?

Yes No

Section 5 – Temporary Crossing

1. Is the crossing proposed to be temporary? Yes No

2. If so, describe the purpose of the crossing and the estimated time it will be needed

3. Will the petitioner remove the crossing at completion of the activity requiring the temporary crossing? Yes No

Approximate date of removal _____

Section 6 – Current Highway Traffic Information

1. Name of roadway/highway State Avenue

2. Roadway classification Principal Arterial

3. Road authority City of Marysville

4. Average annual daily traffic (AADT) 18,000

5. Number of lanes 3

6. Roadway speed 35mph

7. Is the crossing part of an established truck route? Yes No

8. If so, trucks are what percent of total daily traffic? 2%

9. Is the crossing part of an established school bus route? Yes No

10. If so, how many school buses travel over the crossing each day? 50

11. Describe any changes to the information in 1 through 7, above, expected within ten years:

Average daily traffic volumes are anticipated to grow at approximately 3%/year.

Section 7 – Alternatives to the Proposal

1. Does a safer location for a crossing exist within a reasonable distance of the proposed location?
Yes ____ No X

2. If a safer location exists, explain why the crossing should not be located at that site.

3. Are there any hillsides, embankments, buildings, trees, railroad loading platforms or other barriers in the vicinity which may obstruct a motorist’s view of the crossing?
Yes ____ No X

4. If a barrier exists, describe:

- ◆ Whether petitioner can relocate the crossing to avoid the obstruction and if not, why not.
- ◆ How the barrier can be removed.
- ◆ How the petitioner or another party can mitigate the hazard caused by the barrier.

5. Is it feasible to construct an over-crossing or under-crossing at the proposed location as an alternative to an at-grade crossing?

Yes ____ No X

6. If an over-crossing or under-crossing is not feasible, explain why.

This project involves widening of an existing at-grade crossing with extremely limited, low-speed train traffic. (1 train per day, round trip) It does not involve construction of a new crossing.

7. Does the railway line, at any point in the vicinity of the proposed crossing, pass over a fill area or trestle or through a cut where it is feasible to construct an over-crossing or an under-crossing, even though it may be necessary to relocate a portion of the roadway to reach that point?

Yes No

8. If such a location exists, state:

- ◆ The distance and direction from the proposed crossing.
- ◆ The approximate cost of construction.
- ◆ Any reasons that exist to prevent locating the crossing at this site.

9. Is there an existing public or private crossing in the vicinity of the proposed crossing?

Yes No

10. If a crossing exists, state:

- ◆ The distance and direction from the proposed crossing.
- ◆ Whether it is feasible to divert traffic from the proposed to the existing crossing.

Section 8 – Sight Distance

1. Complete the following table, describing the sight distance for motorists when approaching the tracks from either direction.

a. Approaching the crossing from North, the current approach provides an unobstructed view as follows:

(North, South, East, West)

| Direction of sight (left or right) | Number of feet from proposed crossing | Provides an unobstructed view for how many feet |
|------------------------------------|---------------------------------------|---|
| Right | 300 | > 1,000 feet |
| Right | 200 | > 1,000 feet |
| Right | 100 | > 1,000 feet |
| Right | 50 | > 1,000 feet |
| Right | 25 | > 1,000 feet |
| Left | 300 | > 1,000 feet |
| Left | 200 | > 1,000 feet |
| Left | 100 | > 1,000 feet |
| Left | 50 | > 1,000 feet |
| Left | 25 | > 1,000 feet |

b. Approaching the crossing from South, the current approach provides an unobstructed view as follows:

(Opposite direction-North, South, East, West)

| Direction of sight (left or right) | Number of feet from proposed crossing | Provides an unobstructed view for how many feet |
|------------------------------------|---------------------------------------|---|
| Right | 300 | > 1,000 feet |
| Right | 200 | > 1,000 feet |
| Right | 100 | > 1,000 feet |
| Right | 50 | > 1,000 feet |
| Right | 25 | > 1,000 feet |
| Left | 300 | > 1,000 feet |
| Left | 200 | > 1,000 feet |
| Left | 100 | > 1,000 feet |
| Left | 50 | > 1,000 feet |
| Left | 25 | > 1,000 feet |

2. Will the new crossing provide a level approach measuring 25 feet from the center of the railway on both approaches to the crossing?

Yes X No

3. If not, state in feet the length of level grade from the center of the railway on both approaches to the crossing. _____

4. Will the new crossing provide an approach grade of not more than five percent prior to the level grade?

Yes X No

5. If not, state the percentage of grade prior to the level grade and explain why the grade exceeds five percent.

Section 9 – Illustration of Proposed Crossing Configuration

Attach a detailed diagram, drawing, map or other illustration showing the following:

- ◆ The vicinity of the proposed crossing.
- ◆ Layout of the railway and highway 500 feet adjacent to the crossing in all directions.
- ◆ Percent of grade.
- ◆ Obstructions of view as described in Section 7 or identified in Section 8.
- ◆ Traffic control layout showing the location of the existing and proposed signage.

Section 10 – Sidewalks

1. Provide the following information:

- a. Provide a description of the type of sidewalks proposed.
- b. Describe who will maintain the sidewalks.
- c. Attach a proposed diagram or design of the crossing including the sidewalks.

The proposed design calls for installation of a five foot wide concrete sidewalk along the east side of the roadway. The sidewalk will be constructed in accordance with current standards, consisting a four (4) inch thick section of concrete underlain by three (3) inches of compacted crushed surfacing top course.

As illustrated in the attached drawings, the sidewalk will be oriented so that it crosses the railroad tracks at a 90-degree angle – so as to improve the pedestrians' view of approaching traffic from both directions. Coupled with installation of a dedicated pedestrian warning signal and roadway lighting, this design is viewed as a significant improvement over the existing configuration, which includes no sidewalk at all.

Per agreement with BNSF Railway, the City will be responsible for construction and future maintenance of the new sidewalk.

Section 11 – Proposed Warning Signals or Devices

1. Explain in detail the number and type of automatic signals or other warning devices planned at the proposed crossing, including a cost estimate for each. If requesting preemption include the type of train detection circuitry, sequencing and advanced preemption time, justification for the changes and its effects on current warning devices and warning times for drivers.

The design calls for the existing west-side cantilever signal (to serve as a warning device for southbound vehicular traffic) to remain in its present location. By contrast, the east-side cantilever signal is antiquated and will be replaced with a new installation (constant warning/unidirectional crossing control), as shown on the accompanying drawings. As was noted in the preceding section, a dedicated pedestrian warning signal will also be installed – at the location where the east sidewalk crosses the tracks. No preemption is included within the design.

2. Provide an estimate for maintaining the signals for 12 months. N/A (Railroad-maintained)

3. Is the petitioner prepared to pay to the respondent railroad company its share of installing the warning devices as provided by law?

Yes X No

Section 12 – Additional Information

Provide any additional information supporting the proposal, including information such as the public benefits that would be derived from constructing a new crossing as proposed or modifying an existing crossing. Provide project specific information.

This project stands as the second phase of improvements to Marysville’s State Avenue and the at-grade railroad crossing which is commonly referred to as the “Arlington Spur.” The first phase involved widening the roadway and rail crossing from two (2) to three (3) lanes, and was completed in 2006 pursuant to approval by the Utilities and Transportation Commission on February 14, 2001. (Docket No. TR-010100)

Having recently received a \$3 Million grant from the State Transportation Improvement Board (TIB) — its funding partner on the earlier project as well — the City is now poised to move forward with this follow-on phase of work. Specifically, the improvements will include widening of State Avenue (and the rail crossing) to the “ultimate” 5-lane configuration contemplated within the City’s long-range transportation plan.

With two through lanes in both the northbound and southbound directions and a two-way center turn lane, the new configuration represents a substantial improvement — providing added capacity, improving overall traffic operations, and reducing the potential for conflict between through and turning vehicle movements. Coupled with the installation of roadway lighting, extension of the existing pedestrian network, and upgrade of Railroad warning devices, the net result of the project will be a marked improvement in safety for the traveling public.

It should be noted that passage of vehicles through the two-way center turn lane at the crossing will be prohibited, and median islands will be in place to ensure that drivers adhere to this requirement. Moreover, pedestrian travel through the crossing will be made safer in light of the fact that the proposed design includes a *perpendicular* sidewalk crossing of the tracks (providing improved visibility), coupled with installation of a dedicated pedestrian warning device.

Section 13 – Waiver of Hearing by Respondent

Waiver of Hearing

The undersigned represents the Respondent in the petition to construct or reconstruct a highway-railroad grade crossing and inter-tie the highway signal with the railroad crossing signal system.

USDOT Crossing No.: _____ 92-077P _____

We have investigated the conditions at the proposed or existing crossing site. We are satisfied the conditions are the same as described by the Petitioner in this docket. We agree that a crossing be installed or reconstructed and the highway signals inter-tied with the railroad crossing signal system and consent to a decision by the commission without a hearing.

Dated at _____, Washington, on the _____ day of _____, 2015.

Printed name of Respondent

Signature of Respondent's Representative

Title

BNSF Railway Company _____

Name of Company

Phone number and e-mail address

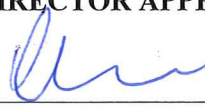
Mailing address

Index #7

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 2/9/2015

| | |
|---|--|
| AGENDA ITEM: Amendment to Construction & Maintenance Agreement with BNSF Railway State Avenue 116 th Street NE to 136 th Street NE Corridor Improvements | |
| PREPARED BY: Patrick Gruenhagen, Project Manager | DIRECTOR APPROVAL:  |
| DEPARTMENT: Public Works - Engineering | |
| ATTACHMENTS: <ul style="list-style-type: none"> • Agreement Amendment • Underlying 2001 Construction & Maintenance Agreement | |
| BUDGET CODE: 30500030.563000 R1404 | AMOUNT: \$422,024.00 |
| SUMMARY: | |

The City's *State Avenue 116th Street NE to 136th Street NE* project is scheduled to be advertised for construction this spring. In conjunction with the planned road widening – from the existing three lane configuration to five – the project has brought about the need for corresponding improvements at the “Arlington Spur” railroad crossing of State Avenue. This work, to be undertaken by BNSF Railway Company (“BNSF”), involves widening of the existing concrete crossing surface and installation of new warning signals — *one each for vehicles and pedestrians* — along the east side of the roadway.

Before work can begin, the City and BNSF must enter into an agreement to establish the framework for planned construction activities at and adjacent to the crossing. That agreement has taken the form of an Amendment to a prior agreement between the City and BNSF, and both documents are enclosed herein. In light of the fact that this represents a continuation and “second phase” of past improvements at the crossing, completed in 2007, the City and BNSF recognized this to be the most efficient means of memorializing and administering the new work. (*versus drafting and entering into a completely new and separate agreement*)

It is estimated by BNSF that the work to construct the needed improvements will be in the amount of \$372,024.00. Staff is requesting a management reserve of \$50,000.00 to cover any potential increased costs associated with construction. The City will be responsible to reimburse BNSF actual construction costs which could be above or below the estimate.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign and execute the enclosed Amendment in the amount of \$372,024.00 with BNSF Railway Company with a management reserve of \$50,000 – for a total authorization of \$422,024.00.

CONSTRUCTION AND MAINTENANCE AGREEMENT AMENDMENT

BF10006995, A-1-BF16808
Mile Post 0.17
Line Segment 406
U.S. DOT Number 092077P
Bellingham Subdivision

THIS CONSTRUCTION AGREEMENT AMENDMENT (hereinafter called, "Agreement"), executed to be effective as of _____, 2015 is an amendment to agreement BF16808 originally dated February 16, 2001 (the "Agreement"), by and between the City of Marysville, a Political Subdivision of the State of Washington, (hereinafter called, "AGENCY"), and BNSF RAILWAY COMPANY, a Delaware Corporation (hereinafter called, "RAILROAD");

This Amendment to the original agreement is written to allow for the updated plans to widen the State Avenue at-grade crossing in Marysville, Washington. The following are changes to Agreement:

ARTICLE I

The following paragraph is hereby added at the end of Article I Section 1:

1. Prior to commencing any work on BNSF's property or right-of-way, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement"), to enter upon and use that portion of BNSF's right-of-way as is necessary to construct, use, and maintain the crossing for roadway purposes, substantially in the form of Exhibit B attached to this Agreement. Agency must pay BNSF the sum of Seventy Four Thousand One Hundred Forty Eight and No/100 Dollars (\$74,148.00) as compensation for the Easement within thirty (30) days of issuing a Notice to Proceed pursuant to Article III, Section 16 of this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

Section 2(b) is hereby deleted in its entirety and replaced with the following:

2. (b) Extend east side of State Avenue crossing 168 feet for two additional vehicular lanes and for pedestrian crossing surface with a new concrete and rubber crossing surface;

Section 2(c) is hereby deleted in its entirety and replaced with the following:

2. (c) Remove and replace existing cantilever on east side of roadway with new cantilever signal and add new pedestrian signals;

Section 2(d) is hereby deleted in its entirety and replaced with the following:

2. (d) Provide at Agency's expense flagging and/or track protection as determined by the Roadmaster;

The following is hereby added to Article 1:

6. After installation of the new crossing surface is completed, the Railroad will maintain, at its own cost and expense, the crossing surface, against normal wear and tear, in a satisfactory manner for the expected life of the crossing surface. Notwithstanding the preceding sentence, the Railroad shall be entitled to receive any contribution toward the cost of such maintenance made available by reason of any existing or future laws, ordinances, regulations, orders, grants, or other means or sources.

ARTICLE II

The following is hereby added to Article II:

14. For any future inspection or maintenance, either routine or otherwise, performed by contractors on behalf of the Agency, Agency shall require the contractors to execute the current version of Exhibit C&C-1 documents. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of exhibit C, a flagger is required to be present; procure Railroad Protective Liability insurance.

ARTICLE III

Article III Section 15 is hereby deleted in its entirety and replaced with the following:

15. Any notice provided for herein or concerning this Agreement must be in writing and delivered in digital format to the Manager of Public Projects and will be deemed sufficiently given when sent to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager of Public Projects
Richard Wagner
2454 Occidental Ave South Ste 2D
Seattle, WA 98134
206-625-6152
Richard.Wagner@BNSF.com

City of Marysville

Pat Gruenhagen
80 Columbia Ave
Marysville, WA 98270
Pat Gruenhagen <PGruenhagen@marysvillewa.gov>

EXHIBITS

The following Exhibits are hereby deleted in their entirety and replaced with the attached:

See new Exhibits A, B, C, C-1, and D attached. These are to replace all original Exhibits.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed Name: _____

Title: _____

CITY OF MARYSVILLE

By: _____

Printed Name: Jon Nehring

Title: Mayor

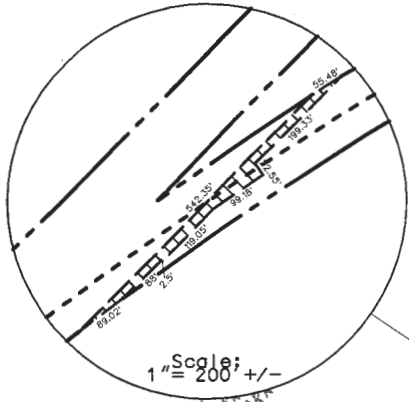
Exhibit "A"

EXHIBIT "A"

BNSF File: S-Marysville
B&W Proj. No.: 012196.003
MAP REFERENCE:
Sta. = s62250
R/W = r512511
Land = N / A

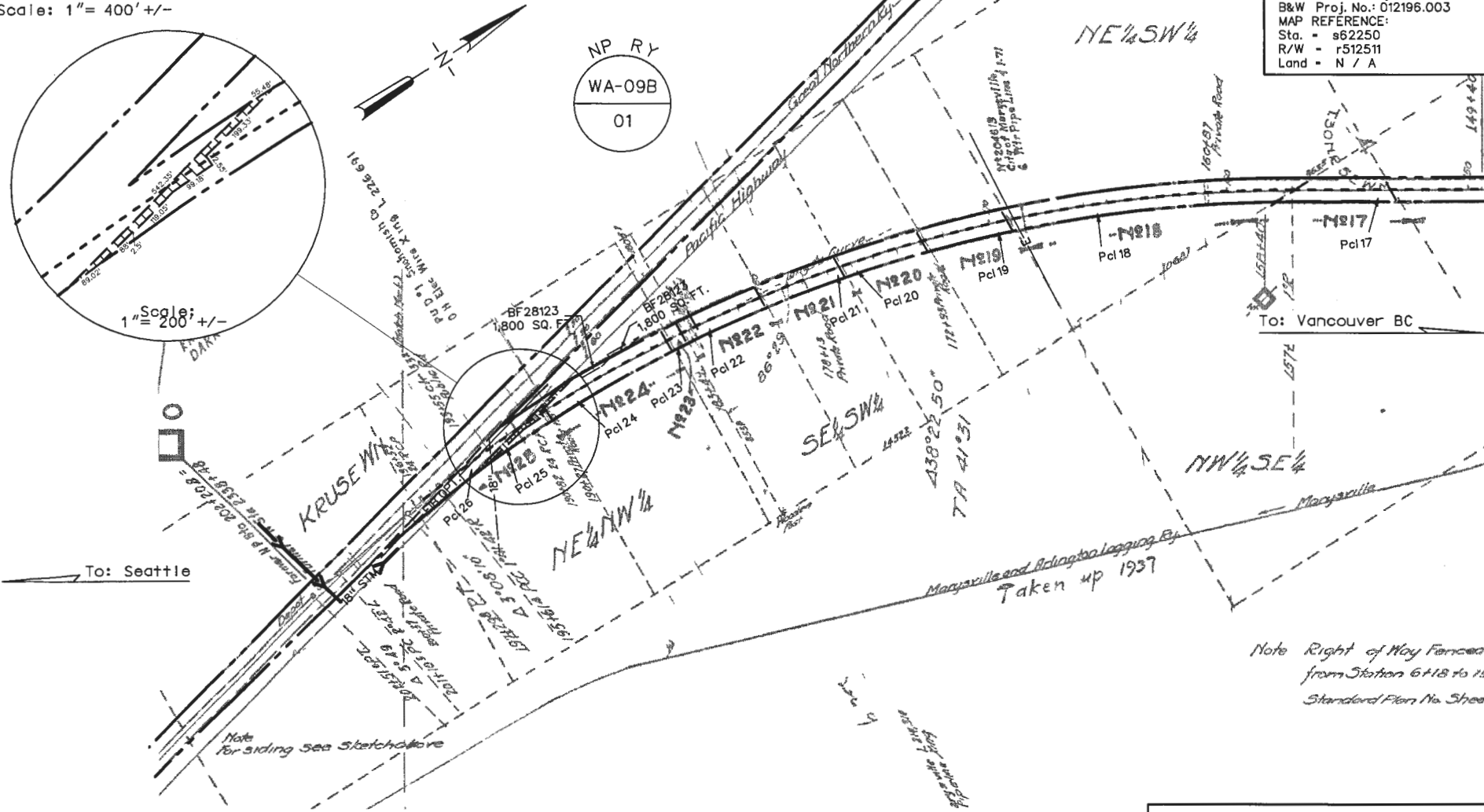
Scale: 1" = 400' +/-

NP RY
WA-09B
01



Scale: 1" = 200' +/-

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.



To: Vancouver BC

To: Seattle

Note Right of Way Fenced from Station 6+18 to 15 Standard Plan No. Sheet

Note for siding see sketch above

To: City of Marysville
At: Marysville
Snohomish County,
Washington

Legend:
Roadway/Sidewalk Easement

Northwest Division L.S. 406
Bellingham Subdivision -L.S. 0050-4
Val. Sec. 01-51017
GN RY WA-17, Map 02
Sec. 9, T30N, R5E Williamette Mar.
May 21, 2007 Rev. August 18, 2014
M.P. 0.2 JNC

Exhibit "B"

**EASEMENT AGREEMENT
FOR ROADWAY PURPOSES ON STATE AVENUE**

THIS EASEMENT AGREEMENT FOR ROADWAY PURPOSES ("Easement Agreement") is made and entered into as of the _____ day of _____ 2014 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and **THE CITY OF MARYSVILLE**, a political subdivision of the State of Washington ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of Marysville, County of Snohomish, State of Washington, on Line Segment 406 at Mile Post .02 , as described or depicted on **Exhibit "A-1 and A-2"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of February 16, 2001, as amended on _____ concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 **Easement Purpose.** The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 **Grant.** Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") for construction, maintenance, repair, operation and reconstruction of roadway improvements over, under and through the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 **Reservations by Grantor.** Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor's property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and

Form 704CM; Rev. 08/17/11

remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee's use and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by (1) serving on Grantee a notice of noncompliance and opportunity to cure providing a reasonable opportunity to cure (minimum time period of thirty (30) days and (2) if cure is not effected after a reasonable opportunity is given, serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

Section 8 Default and Termination.

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 **Liens.** Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 **Tax Exchange.** Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

Section 12 **Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 **Recordation.** It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 30 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 **Miscellaneous.**

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Washington without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

ADMINISTRATIVE FEE

15. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of \$2,000.00 over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

THE CITY OF MARYSVILLE, a political subdivision of the State of Washington

By: _____
Name: _____
Title: _____

EXHIBIT "A-1" AND "A-2"

Premises



Pacific Surveying & Engineering

1812 Cornwall Avenue
 Bellingham, WA 98225
 Phone 360-671-7387 ^ Fax 360-671-4685
 www.psesurvey.com

"EXHIBIT A-1"

**EASEMENT FROM BURLINGTON NORTHERN SANTA FE RAILROAD
 SITUATED WITHIN THE NW ¼ OF SECTION 9 TOWNSHIP 30 NORTH, RANGE 5 EAST OF
 THE WILLAMETTE MERIDIAN, SNOHOMISH COUNTY, WASHINGTON**

5/7/2007

SURVEYORS NOTE:

The center line of State Avenue is based on the Right of Way plans titled State Avenue, 116th St NE to 136th St NE, dated December 26, 2006.

Commencing at the centerline of State Avenue marked by a brass cap monument at the Right of Way Plan station 237+44.46; thence North 12°31'41" West along said centerline 1550.87 feet to station 252+95.33; thence at right angles North 77°28'19" East 30.00 feet to the easterly margin of said State Avenue and Point of Beginning; thence North 12°31'41" West parallel with said centerline along said easterly margin 542.35 feet to station 258+37.68 being a point of intersection with the westerly margin of the said Burlington Northern Santa Fe Railroad, also being the beginning of a curve concave to the east, from which radius point bears South 89°14'54" East 5779.58 feet; thence along said curve and said westerly margin northerly 55.48 feet through a central angle of 0°33'00" to the end of curve at station 258+91.62, 43.00 feet right of said centerline; thence South 12°31'41" East parallel with said centerline 199.33 feet to station 256+92.29, 43.00' right from said centerline; thence North 89°12'23" East 22.55' to station 256+87.70, 65.08 feet right from said centerline; thence South 01°08'26" East 99.18 feet to station 255+90.47, 45.50 feet right from said centerline; thence parallel with said centerline South 12°31'41" East 119.05 feet to station 254+71.42, 45.50 feet right from said centerline; thence perpendicular to said centerline South 77°28'19" West 2.50 feet to station 254+71.42, 43.00 feet right from said centerline; thence parallel with said centerline South 12°31'41" East 88.00 feet to the intersection with the easterly margin of said Railroad and beginning of a curve concave to the east at station 253+83.42, 43.00 feet right from said centerline from which radius point bears North 86°19'02" East 5679.58 feet; thence along said curve and said easterly margin southerly 89.02 feet through a central angle of 0°53'53" to the end of curve and intersection with said easterly margin of said State Avenue and Point of Beginning.
 Containing 8,365 Square Feet more or less.

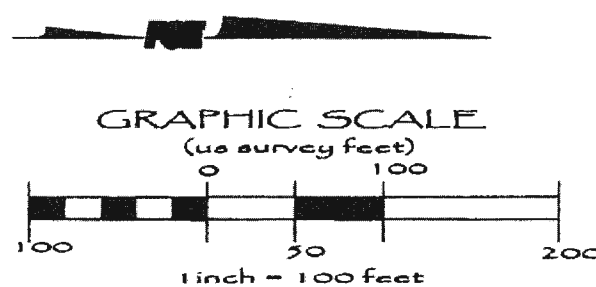
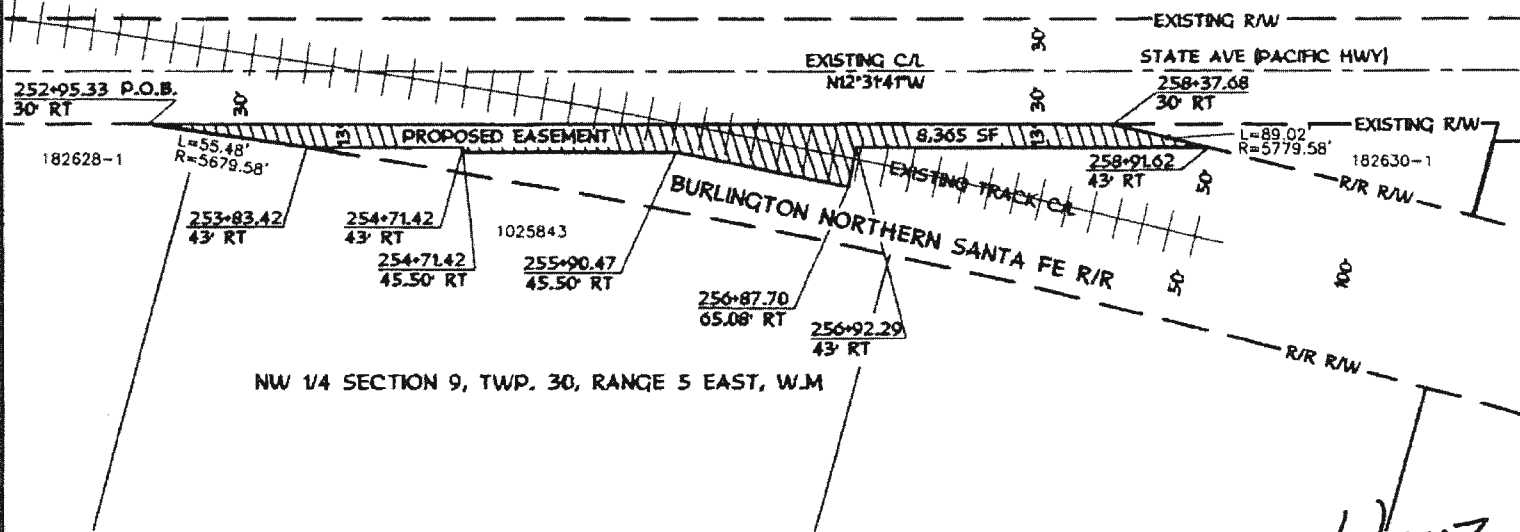




PACIFIC SURVEY & ENGINEERING INC
22122 20TH AVE, SE, SUITE 159, BOTHELL, WA 98021 PH: 425.205.2035 F: 205.205.2038
BELLINGHAM@BOTHNELL.COM FAX: PSE@PACIFICSURVEY.COM WWW.PACIFICSURVEY.COM

EXHIBIT A-2: FOR PROPOSED EASEMENT

THE RIGHT OF WAY AND STATIONING OF STATE AVE IS REFERENCED TO THE RIGHT OF WAY PLAN CALLED "STATE AVENUE, 116TH ST NE TO 136TH ST NE", MARYSVILLE, WASHINGTON, DATED DECEMBER 26, 2006. ON FILE WITH THE PUBLIC WORKS DEPT., CITY OF MARYSVILLE, WA.



PREPARED BY RC 5/7/07
RRASEEXHIBIT.DWG
2004094.02

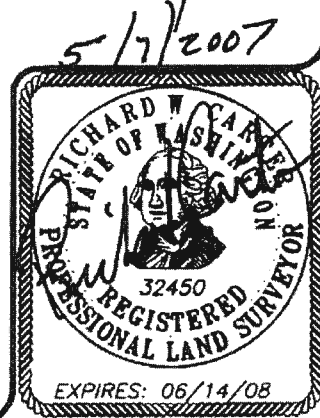


EXHIBIT "B"
MEMORANDUM OF EASEMENT

After recording return document to:

City Clerk
 City of Marysville
 1049 State Street
 Marysville, WA 98270

DOCUMENT TITLE:

Memorandum of Easement

REFERENCE NO. OF DOCUMENT(S) ASSIGNED OR RELEASED:

N/A

GRANTOR(S):

1. BNSF RAILWAY COMPANY, a Delaware corporation

GRANTEE(S):

1. CITY OF MARYSVILLE, a Washington municipal corporation

ADDITIONAL LEGAL DESCRIPTION ON PAGE(S):

Exhibit "A-1"

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT is hereby executed this _____ day of _____, 2014, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and **THE CITY OF MARYSVILLE**, a political subdivision of the State of Washington ("**Grantee**"), whose address for purposes of this instrument is 1049 State Street, Marysville, Washington, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Snohomish County, as described on **Exhibit "A-1 and A-2"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____, 2014 (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS

§
§
§

COUNTY OF TARRANT

This instrument was acknowledged before me on the _____ day of _____, 2014,
by _____ (name) as
_____ (title) of **BNSF RAILWAY COMPANY**, a Delaware
corporation.

Notary Public

My appointment expires: _____

(Seal)

GRANTEE:

THE CITY OF MARYSVILLE, a political
subdivision of the State of Washington

By: _____
Name: _____
Title: _____

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
2014, by _____ (name) as
_____, (title) of _____, a
_____.

Notary Public

My appointment expires: _____

(Seal)

Exhibit "C"
CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the State Avenue 116th Street NE to 136th Street NE Widening Project.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Pat Gruenhagen
 City of Marysville
 80 Columbia Ave
 Marysville, WA 98270
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

- **1.01.06** Contractor must notify the City of Marysville at (360) 363-8279 and Railway's Manager Public Projects, telephone number (206) 625-6029 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway; must refer to Railroad's file 092077P.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Superintendent and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:

- 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" Vertically above top of rail
 - **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City of Marysville and must not be undertaken until approved in writing by the Railway, and until the City of Marysville has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
 - **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
 - **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the City of Marysville for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
 - **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
 - **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
 - **1.03.10** The Contractor, upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway

prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone 425-304-6690) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by the (Agency). The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
 - **1.05.03d** The average train traffic on this route is 1 freight trains per 24-hour period at a timetable speed 10 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW**

OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (206-625-6189). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800)

832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- 1.09.01 The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time:
County: _____ 3. Temperature: _____ 4. Weather
(if non-Railway location)
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____
12. Treatment:
? First Aid Only
? Required Medical Treatment
? Other Medical Treatment
13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX**

Exhibit "C-1"

**Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: BFXXXXXX

Agency Project: _____

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 200__ with the City of Marysville for the performance of certain work in connection with the following project: ~~State Street Widening~~ State Avenue 116th Street NE to 136th Widening. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the City of Marysville (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being

brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Washington's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

BNSF RISK MANAGEMENT
2500 Lou Menk Drive AOB-1
Fort Worth, TX 76131-2828
Fax: 817-352-7207

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this *Agreement* has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this *Agreement*. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, *Railroad* may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming *Railroad* as an additional insured, and requiring that the subcontractor release, defend and indemnify *Railroad* to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify *Railroad* herein.

Failure to provide evidence as required by this section will entitle, but not require, *Railroad* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by *Railroad* will not be limited by the amount of the required insurance coverage.

For purposes of this section, *Railroad* means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be as high as \$50,000.00 per incident.

Contractor and its subcontractors must give Railway's representative (4) four weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

City: _____ State: _____ Zip: _____
Fax: _____
Phone: _____
E-mail: _____

Accepted and effective this _____ day of 200_.

Exhibit "D"

AUTHORITY FOR EXPENDITURE

| | | |
|-------------------------------------|--------------------------|------------------------|
| LOCATION : KRUSE JCT | LINE SEGMENT : 406 | AFE NUMBER : |
| PLANITEM NUMBER : 102496000 | MILEPOST : 0.164 | RFA NUMBER : 5971914 |
| PROPERTY OF : BNSF RAILWAY COMPANY | DIVISION : NW | CPAR NUMBER : CB960114 |
| OPERATED BY : BNSF RAILWAY COMPANY | SUBDIVISION : BELLINGHAM | BUDGET YEAR : 2014 |
| JOINT FACILITY : CITY OF MARYSVILLE | TRACK TYPE : S | BUDGET CLASS : 6 |
| % BILLABLE (+/-) : 100.0 | TAX STATE : WA | REPORTING OFFICE : 716 |
| | SPONSOR : VP ENGINEERING | CENTER/ROLLUP : 23915 |

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP STATE AVE REHAB NWN DIV BELLINGHAM SUB LS 406 MP .164 - DOT# 092077P - 100% BILLABLE CITY OF MARYSVILLE
 PRIMARY FUNDING SOURCE IS CITY FUNDS

| PLAN ITEM | LINE SEG | BEG MP | END MP | TRK NBR | BEGIN STATION | END STATION | PROJECT TYPE | BUD YEAR |
|-----------|----------|--------|--------|---------|---------------|-------------|----------------------------|----------|
| 102496000 | 406 | 0.164 | 0.164 | S | KRUSE JCT | KRUSE JCT | PUBLIC IMPROVEMENT PROJECT | 2014 |

| | CASH CAPITAL | NONCASH CAPITAL | OPERATING EXP | REMOVAL COSTS | BILLABLE | TOTALS |
|----------------|--------------|-----------------|---------------|---------------|----------|---------|
| LABOR COSTS | 0 | 0 | 0 | 0 | 101,715 | 101,715 |
| MATERIAL COSTS | 0 | 0 | 0 | 0 | 151,721 | 151,721 |
| OTHER COSTS | 0 | 0 | 0 | 0 | 28,215 | 28,215 |
| TOTALS | 0 | 0 | 0 | 0 | 281,651 | 281,651 |

SYSTEM MAINTENANCE AND PLANNING
 ESTIMATE REF. NUMBER: 5971914
 COSTING DATE: 09/18/2014

PRINTED ON: 09/24/2014
 ESTIMATED BY: GRACIA
 PRINTED BY: GRACIA

CEPS PLAN ITEM DOCUMENT
(FOR INTERNAL BNSF RAILWAY USE ONLY)

| | | |
|-------------------------------------|----------------------------------|--------------------------|
| LOCATION : KRUSE JCT | LINE SEGMENT : 406 | AFE NUMBER : |
| PLANITEM NUMBER : 000251358 | MILEPOST : 0.16 | RFA NUMBER : |
| PROPERTY OF : BNSF RAILWAY COMPANY | DIVISION : NW | CPAR NUMBER : |
| OPERATED BY : BNSF RAILWAY COMPANY | SUBDIVISION : BELLINGHAM | BUDGET YEAR : 2014 |
| JOINT FACILITY : CITY OF MARYSVILLE | ENGR. DIVISION : NORTHWEST NORTH | BUDGET CLASS : 10 |
| % BILLABLE (+/-) : 100.0 | TAX STATE : WA, CO: SNOHOMISH | REPORTING OFFICE : 461 |
| REQUESTOR ID : Q446 | MATL DATE : | SPONSOR : VP ENGINEERING |
| PROJECT TYPE : PIP | LOCATION CODE : 513052 | DEPT CODE : MOWGH |
| DOT NUMBER : 092077P | TRACK TYPE : 1 | DERAILMENT CODE : |
| STIMULUS FUND TYPE : FHWA | STIMULUS STATUS : BUY AMERICAN | |

PURPOSE, JUSTIFICATION AND DESCRIPTION

STATE STREET - MARYSVILLE, WA; INSTALL FLASHERS ; NORTHWEST DIV; BELLINGHAM SUBDIV; LS 406; MP 0.16; DOT# 092077P; SEQ# 56163.

MONTHLY POWER UTILITY COST CENTER : 61504.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY.

THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

***** SIGNAL WORK ONLY *****

THE CITY OF MARYSVILLE, WA IS FUNDING 100% OF THIS PROJECT.

MAINTAIN PROPRIETARY CONFIDENTIALITY.
PRIMARY FUNDING SOURCE IS FHWA
** BUY AMERICA(N) APPLIES **

| | CASH CAPITAL | NONCASH CAPITAL | OPERATING EXP | REMOVAL COSTS | BILLABLE | TOTALS |
|----------------|--------------|-----------------|---------------|---------------|---------------|---------------|
| LABOR COSTS | 0 | 0 | 0 | 0 | 45,461 | 45,461 |
| MATERIAL COSTS | 0 | 0 | 0 | 0 | 19,883 | 19,883 |
| OTHER COSTS | 0 | 0 | 0 | 0 | 25,029 | 25,029 |
| TOTALS | 0 | 0 | 0 | 0 | 90,373 | 90,373 |

SYSTEM MAINTENANCE AND PLANNING
ESTIMATE REF. NUMBER : 000251358 - 2--2S
COSTING DATE : 09/18/2014

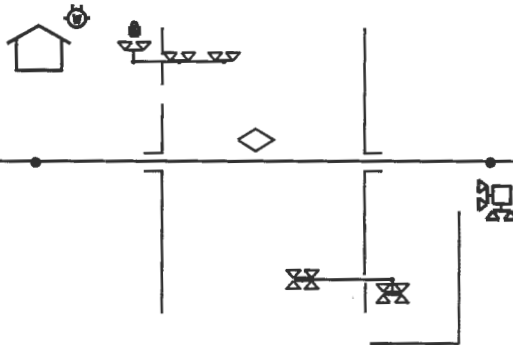
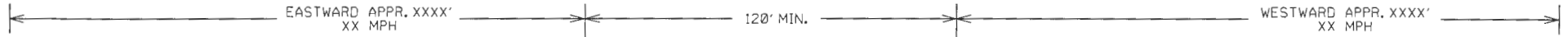
PRINTED ON : 10/23/2014
ESTIMATED BY : GRAY
PRINTED BY : GRAY

TOTAL BILLABLE COST

The Burlington Northern & Santa Fe Railway Company

TO ARLINGTON ⁹⁸

TO KRUSE JCT.



STATE ROAD
DOT # 092 077 P
PROJECT #56163









INSTALL: FLASHERS
CONTROL DEVICES: CONSTANT WARNING

BOLD - IN

~~FLASH~~ - OUT

SALVAGE: NONE



-  INSTRUMENT HOUSE
-  BELL
-  METER
-  CROSSING CONTROL CONNECTIONS
-  BIDIRECTIONAL CROSSING CONTROL
-  UNIDIRECTIONAL CROSSING CONTROL
-  COUPLER OR TERMINATION
-  GUARD RAIL

Warning device placement:
 Clearance to C.L. Track = Min. 12'
 Edge of Road to C.L. Foundation:
 Min. 4'3" with curb,
 Min. 8'3" without curb,
 Max. 12'
 House Clearance:
 25' Min. to Near Rail
 30' Min. to Edge of Road
 ALL LIGHTS TO BE LED

BNSF RAILWAY CO.
LOCATION: MARYSVILLE, WA
 STREET: STATE ST.
 LS: 406
 M.P. 0.16
 DOT # 092 077 P
 DIVISION: NORTHWEST
 SUBDIVISION: BELLINGHAM
 KANSAS CITY
 NO SCALE
 DATE: 10/23/2014
 FILE: 56163 STATESKETCH.dgn
 JFK

**CONSTRUCTION AND MAINTENANCE AGREEMENT
WIDEN AND IMPROVE STATES STREET (MP 0.17)
MARYSVILLE, WASHINGTON**

RAILWAY Contract NO. _____
File No _____

AGREEMENT, made this 16th day of February, 2008, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter referred to as the "Railway", and MARYSVILLE, WASHINGTON, a municipal corporation, hereinafter referred to as the "Agency".

RECITALS:

- WHEREAS: the Bellingham Subdivision is currently owned and operated by the Railway; and
- WHEREAS: in the interest of aiding motor vehicle traffic the Agency is proposing to widen and improve the State Street at grade crossing, hereinafter referred to as the Project.
- WHEREAS: the centerline of the State Street at grade crossing crosses over the Railway's right-of-way and mainline at railroad survey station 193+91.5, Railroad MP 0+829.3', (MP 0.17), and
- WHEREAS: the Project is located in the NE1/4 of the NW 1/4 of Section 9, T 30 N, R 5 E, WM. as shown on the plans marked Exhibit "A" attached hereto and made a part hereof, and
- WHEREAS: Automatic flashing light traffic control devices, cantilever type, and train activation devices will be removed and replaced under this contract.
- WHEREAS: the Railway will be required to perform certain work on its facilities, and
- WHEREAS: the parties hereto desire that the work to be performed by the Agency in connection with said construction be performed in accordance with plans and specifications to be prepared by the Agency, and
- WHEREAS: the Agency is willing to undertake the construction of said project with Agency funds, state funds and such federal funds as may be available, and
- WHEREAS: the Railway is willing to consent to the execution of the said project upon the terms and conditions herein stated and not otherwise, and
- WHEREAS: the parties hereto desire to contract for work to be performed by each of them in connection with this project and the payment of costs and expenses therein involved, and

AGREEMENT:

ARTICLE I

NOW THEREFORE, in consideration of the covenants of the Agency hereinafter contained, and faithful performance thereof, Railway agrees:

1. The Railway shall grant to the Agency by separate instrument:
 - a) For and consideration of \$ 2,500, a crossing easement of 250 square feet more or less, for roadway purposes across the Railway's right-of-way (outlined in bold) as identified on Exhibit "A" attached.
 - b) For and consideration of \$ 2,000 the Agency shall pay an administration fee to the Railway.

2. To furnish all labor, materials, tools, and equipment, and do "Railroad Work" required due to the construction of the Project, such railroad work and the estimated cost thereof being as shown in Exhibit "B" attached hereto and made a part hereof. In the event that construction of the Project has not commenced within six (6) months from the effective date of this Agreement, Railway may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit "B". In such case, Railway shall provide to the Agency its revised cost estimates highlighting all changes that are made. Any item of work incidental to those items listed in Exhibit "B", but not specifically mentioned therein, may be included as part of this agreement as an item of work upon written approval of Agency, if practicable.

The Railway may submit progress bills to the Agency during the progress of the work for the actual cost of services and expenses. The Agency will then pay progress bills within 30 days after receipt of a properly submitted bill. If the billing is disputed for any reason, the Agency will promptly notify the Railway and will pay any undisputed amount.

The Railway and the Agency shall maintain records regarding the work performed and the costs and expenses incurred by the parties for the project in accordance with generally accepted accounting principles and practices. Said records shall be made available to the other party, or for Agency, or federal audit, upon request during normal business hours, for a period of three years after the final payment.

Construction of the Project shall include the following work by Railway:

- (a) Preliminary engineering, design, and contract preparation;
 - (b) Remove the existing crossing surface, Place a 376' concrete crossing, complete with new ties, ballast and engineering fabric. Additional ties will be provide for the ultimate 5 lane configuration.
 - (c) Remove and replace antiquated cantilevers, with new cantilevers signals, with new train activation devices.
 - (d) Furnishing of such watchmen and flagmen as may be necessary for the safety of its property and the operation of its trains during construction of said Project; and
 - (e) Furnishing of engineering and inspection as required for construction of said Project.
3. To do all work provided in Article I, Section 2 above with its own employees working under Railroad Labor Agreements or by contractor(s), if necessary, and on an actual cost basis.
 4. Agency agrees to reimburse Railway for work of an emergency nature caused by Agency or Agency's contractor, in connection with the Project which Railway deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or Railway property. Such work may be performed by Railway without prior approval of Agency and Agency agrees to reimburse Railway for all such emergency work.
 5. To submit to Agency for payment upon completion of the Project, a detailed statement covering the cost of the work performed by Railway, segregated as to labor and materials, and in accordance with and subject to the terms and provisions of Federal Highway Administration's FHPM 143, as amended. All applicable portions of the Federal Highway Administration's FHPM 662.1 as amended and FHPM 143 as amended are by reference incorporated herein and made a part hereof.

ARTICLE II

IN CONSIDERATION of the covenants of Railway herein set forth and the faithful performance thereof, Agency agrees as follows:

1. To furnish to Railway plans and specifications for the Project. Four sets of said plans, together with two copies of specifications, shall be submitted to Railway for approval prior to commencement of construction. After having been approved by both parties hereto, said plans and specifications are hereby adopted and incorporated into this agreement by reference.

2. To acquire, at no cost to Railway, all rights of way necessary for the construction of the Project.
3. To make any and all arrangements to secure the location or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be found necessary to locate or relocate in any manner whatsoever due to the construction of the project.
4. To construct the Project as shown on Exhibit "A" and do all work provided for in the plans and specifications for the Project, except such work that Railway herein agrees to do. Principal elements of work to be performed by Agency in the construction of the Project are as follows:
 - (a) Necessary Grading and Paving of the roadway approaches to the crossing and furnish and place asphalt concrete paving up to the crossing.
 - (b) Furnish and place advance warning signs and standard pavement parkings for the railroad at grade crossing.
 - (c) Perform all other work not specifically mentioned as work to be performed by the Railway necessary to complete the project in accordance with the plans and specifications.
6. To furnish all labor, materials, tools, and equipment in performing the work it agrees to perform herein. All work of construction with respect to said Project shall be undertaken by Agency, or Agency's contractor and shall be performed at such times as shall not endanger or interfere with the safe and timely operations of Railway's track and other facilities.
7. To require its contractor(s) to notify Railway's Roadmaster at least 30 calendar days in advance of commencing work on Railway property or near Railway's tracks, when requesting a Railway flagman in accordance with the requirements of "The Right of Entry Agreement" attached hereto, in order to protect Railway from damage to its trains and property.
8. To require its contractor(s) to furnish Railway's Manager of Public Projects, for approval, four copies of plans and two sets of calculations of any shoring or cribbing proposed to be used over, under, or adjacent to Railway's tracks.
9. The Agency agrees to include the following provisions in its contract with a contractor performing work on said Project.
 - (a) Fiber optic cable systems owned by various telecommunication companies may cross or run parallel in Railway's rail corridor. The Contractor shall be responsible to contact Railway and/or the telecommunications companies to determine whether there are any fiber optic cable systems located within the Project boundaries that could be damaged or their service disrupted due to the construction of the Project. The contractor shall also pothole all lines either shown on the plans or marked in the field in order to verify their locations. The contractor shall also use all reasonable methods when working in the Railway rail corridor to determine if any other fiber optic lines may exist.
 - (b) The telecommunication companies shall be responsible for the rearrangement of any facilities determined to interfere with the construction. The contractor shall cooperate fully with any company performing these rearrangements.
10. To also incorporate in each contract for construction of the Project, or the specifications therefor, the provisions set forth in Article II, Sections 6, 7, 8, 9, 11, (a) and 12 (b), and in Article III, Sections 3, 4, 10, and 11, and the provisions set forth in the "Right-of-Entry Agreement" attached hereto and by reference made a part hereof.
11. That, except as hereinafter otherwise provided, all work to be performed hereunder by Agency in the construction of the Project will be performed pursuant to a contract or contracts to be let by Agency, and all such contracts shall provide.
 - (a) That all work performed thereunder, within the limits of Railway's right of way shall be performed in a good and workmanlike manner, and in accordance with plans and specifications approved by Railway. Those changes or modifications during construction that affect safety or Railway's operations shall also be subject to Railway's approval;

- (b) That no work shall be commenced within Railway's right of way until each of the contractors employed in connection with said work shall have (i) executed and delivered to Railway an Agreement in the form of "The Right-of-Entry Agreement" delivered to and secured Railway's approval of the insurance required by said "Right-of-Entry Agreement".
12. (a) Railway shall have the right to request that any Agency employee, any Agency contractor, or any employee of a Agency contractor who performs any work within Railway's right of way and which affects Railways operations or facilities, be removed from the Project for incompetence, neglect of duty, unsafe conduct or misconduct. In the event Agency or its contractor elects not to honor such request, Railway may stop work within its right of way until the matter has been fully resolved to Railway's satisfaction. The party whose employee has been asked to leave the Project will indemnify the requesting party against any claims arising from such removal.
- (b) Agency's employees, agents, contractors, representatives and invitees shall wear the current BNSF Personnel Protective Equipment ("PPE") when on the Railway's rail corridor. Railway PPE shall meet applicable OSHA and ANSI specifications. Existing Railway PPE requirements are: (i) safety glasses; permanently affixed side shields; no yellow lenses; (ii) hard hats with high visibility orange cover; (iii) safety shoes with hardened toe, above the ankle lace up and a defined heel; and (iv) high visibility reflective orange vests. Hearing protection, fall protection and respirators will be worn as required by state and federal regulations.
13. To advise Railway's Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion and to notify Railway's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with Railway for the purpose of making final inspection of the Project.

ARTICLE III

IN CONSIDERATION of the premises, it is mutually agreed as follows:

1. That all work contemplated in this agreement shall be performed in a good and workmanlike manner, in accordance with plans and specifications approved by BNSF, and each portion shall be promptly commenced by the parties hereto obligated to do the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction that affect Railway shall be subject to approval by Railway prior to commencement of such changes or modifications.
2. That such work shall be done in accordance with detailed plans and specifications approved by both parties.
3. Agency and Railway shall to the extent reasonably practicable adhere to the construction schedule for all Project work. The parties agree that Railway's failure to complete Railroad work in accordance with the construction schedule by reason of inclement weather, unforeseen railroad emergencies, or other conditions beyond its reasonable control, will not constitute a breach of this Agreement by Railway nor subject Railway to any liability or responsibility for added expense to the Agency.
4. In the event of an unforeseen railroad emergency and regardless of the requirements of the construction schedule, Railway reserves the right to reallocate all or a portion of its labor forces assigned to perform the Railroad Work when Railway believes such reallocation is necessary to provide for the immediate restoration of railroad operations of Railway or its affiliates or to protect persons or property on or near any Railway owned property or any related railroad. Railway will reassign such labor forces to again perform the Railroad Work when, in its sole but good faith opinion, such emergency condition no longer exists. Railway will not be liable for any additional costs or expenses of the Project resulting from any such reallocation of its labor forces. The parties further agree that such reallocation of labor forces by Railway and any direct or indirect results of such reallocation will not constitute a breach of this Agreement by Railway.
5. That if any Agency Contractor shall prosecute the Project work contrary to the Plans and Specifications or if any Agency Contractor shall prosecute the Project work in a manner Railway deems to be hazardous to its property, facilities or the safe and expeditious movement of its traffic, or the insurance described in "The Right-of-Entry Agreement" hereof shall be canceled during the course of the Project, the Railway shall have the right to stop the work until the acts or omissions of such Agency Contractor have been fully rectified to the satisfaction of

Railway's Division Engineer, or additional insurance has been delivered to and accepted by Railway. Such work stoppage shall not give rise to or impose upon Railway any liability to Agency, or to any Agency Contractor. The right of Railway to stop the work is in addition to any other rights Railway may have which include, but are not limited to, actions for damages or lost profits. In the event that Railway shall desire to stop work, Railway agrees to give immediate notice thereof in writing to those individuals set forth in Section 15 of this Article III.

6. The Agency shall supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications, the terms of this agreement and all safety requirements of Agency. If at any time during construction Agency determines that proper supervision and inspection is not being performed by Agency personnel, Agency shall have the right to stop construction (within or adjacent to its operating right of way) and to request that the Agency correct the situation before construction is allowed to proceed. If Railway believes the situation is not being corrected in an expeditious manner, Railway shall immediately notify the Agency so that the Agency can take appropriate corrective action.
7. The Project shall not be commenced by Railway until Agency has issued Railway a "Notice to Proceed". Agency's Contractor shall not commence construction of the Project until the Agency shall have given not less than thirty (30) days prior written notice to Agency's Manager of Public Projects which notice shall state the time that Agency's Contractor plans to begin construction of the Project. Each notice shall make reference to Railway's file name Marysville, WA. - Widen and Improve State Street.
8. The construction of said Project shall be performed and effected in such a manner as not to interfere with the safe and timely operation of locomotives, trains, cars and on track maintenance equipment, over Railway's tracks.
9. After completion of the construction of the Project as hereinabove described:
 - (a) Railway will maintain at its sole cost and expense the crossing surface in accordance with state law.
 - (b) Agency at its sole cost and expense, maintain all improvements, other appurtenances, advance warning signs, and standard pavement markings.
10. Before entering upon Railway's right of way for maintenance purposes, Agency shall notify Railway's Manager Public Projects to obtain prior authorization, and, If work is contracted, Agency will require its contractor(s) to comply with the obligations in favor of Railway, set forth in the "Right -of-Entry Agreement" as may be revised from time to time, and accepts responsibility for compliance by its contractor(s).
11. Agency shall indemnify and save harmless Railway, its agents and employees, against all liability, claims, demands, damages, or costs for (a) death or bodily injury to persons including, without limitation, the employees of the parties hereto, (b) injury to property including, without limitation, the property of the parties hereto, (c) design defects, or (d) any other loss, damage or expense arising under either (a), (b) or (c), and all fines or penalties imposed upon or assessed against Railway, and all expenses of investigating and defending against same, arising in any manner out of (1) activities, use, or presence, or negligence of Agency, or Agency's employees, or Agency's contractors, subcontractors, agents, invitees or any of their employees, in, on, or near Railway's right of way, or, (2) The performance, or failure to perform, by the Agency, its contractors, subcontractors, or agents, its work or any obligation under this agreement..
11. This Agreement shall be interpreted in accordance with the laws of the State of Washington.
13. All the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, except that no party may assign any of its rights or obligations hereunder without the prior written consent of the other party.
14. In the event that construction of the Project has not begun for a period of three years from the date of this agreement, this agreement shall become null and void.
15. Any notice provided for or concerning this agreement shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

The Burlington Northern and Santa Fe Railway Company:

Railway's Manager of Public Projects

John M. (Mike) Cowles
2454 Occidental Avenue So., Suite 1-A
Seattle, WA. 98134-1451
Telephone No: (206) 625-6146
Telecopy No.: (206) 625-6115

With a copy to:

Division Engineer
2454 Occidental Ave. So. - Ste 1-A
Seattle, WA. 98134
Telephone No. (206) 625-6363
Telecopy No. (206) 625-6265

Roadmaster
2900 Bond Street
Everett, WA. 98201
Telephone No. (425) 304-6690
Telecopy No. (425) 304-6627

CITY OF MARYSVILLE, WA.

Robin Nelson, P.E.
Project Manager
80 Columbia Avenue
Marysville, WA. 98270
Telephone No. (360) 651-5170
Telecopy No. (360) 651-5099

IN WITNESS WHEREOF, County has caused this Agreement to be executed and witnessed by its duly qualified and authorized officials, and BNSF has executed this Agreement, both as of the day and year first above written.

WITNESS:

APPROVED AS TO FORM 1/22/01
Ward
Burlington Northern Santa Fe Law Department

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By Bob Soden
~~Manager Public Projects~~
AVP-Engineering Services

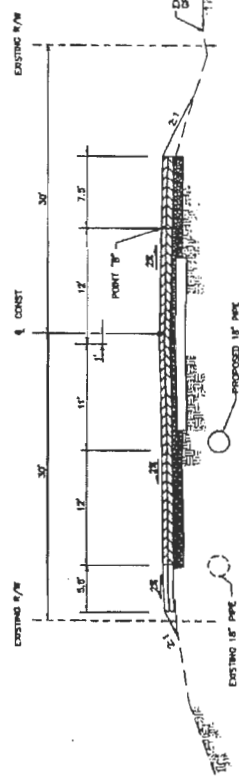
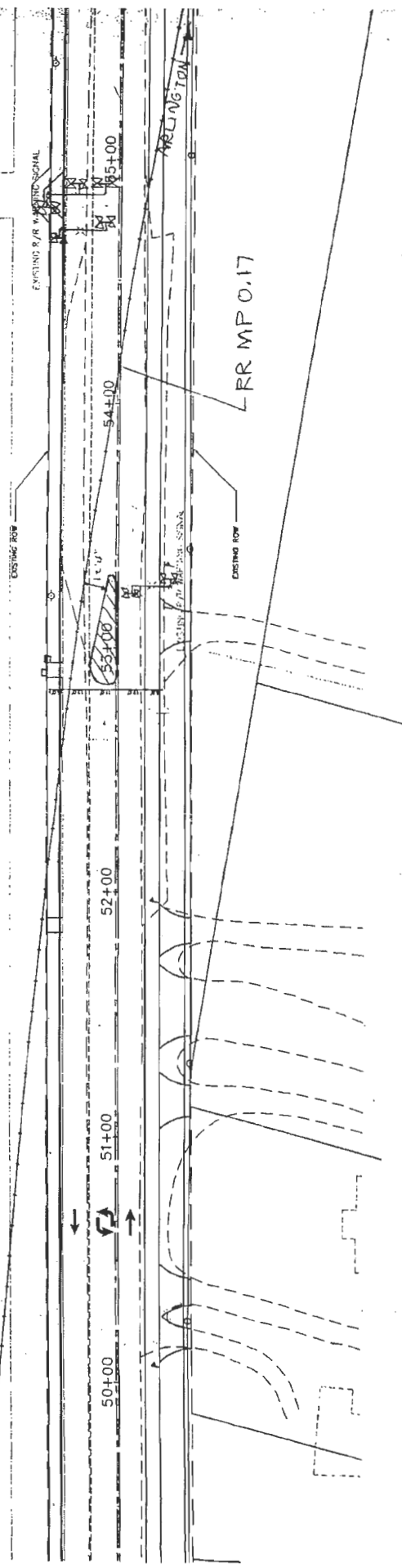
MARYSVILLE, WASHINGTON

By David Wann
Title MAYOR

← ML. SEPTUE

← KRUIE JCT.

VERTICAL DATUM ML BLAINS



TYPICAL SECTION PHASE ONE
NOT TO SCALE

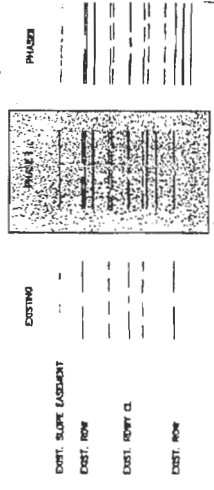


EXHIBIT "A"

| | | | |
|--------------------------|------|-------|------------|
| DESIGNED BY: 12/27/09 | NO.: | DATE: | REVISIONS: |
| ENTERED BY: 12/27/09 | | | |
| CHECKED BY: 12/27/09 | | | |
| PROJ. ENGR.: | | | |

| | |
|-----------------------|------|
| CONTRACT NO. 98095 | DATE |
| | |

| | |
|--|---|
| | Skilling - Connolly Inc. Consulting Engineers <small>Civil, Transportation, Environmental 1000 Lakeside Blvd., Suite 100 Fairfax, VA 22031</small> |
|--|---|

| | |
|------------------------|--------------------------|
| R/R PHASE I | PARTIAL SITE PLAN |
|------------------------|--------------------------|

APPROVAL FOR CONSTRUCTION: _____ DATE: _____

THE B. N. S. F. RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF MARYSVILLE

LOCATION - EDGECOMB

DETAILS OF ESTIMATE

PURPOSE, JUSTIFICATION AND DESCRIPTION

UPGRADE CROSSING SURFACE FROM CONCRETE SLABS AND ASPHALT TO CONCRETE, REPLACE 100 LB RAIL WITH 136 LB RAIL.

CITY OF MARYSVILLE, WA. TO RESPONSIBLE FOR 100% OF THE COST.

| DESCRIPTION | QUANTITY | U/M | COST | TOTAL \$ |
|--|----------|------|---------|----------|
| ***** | | | | |
| LABOR | | | | |
| ***** | | | | |
| PICKUP CROSS TIES | 156.96 | MH | 2,733 | |
| PICKUP RAIL/OTM | 156.96 | MH | 2,733 | |
| PLACE FIELD WELDS | 122.08 | MH | 2,327 | |
| REPLACE CROSS TIES | 352.07 | MH | 6,130 | |
| REPLACE PUBLIC CROSSING | 352.07 | MH | 6,130 | |
| REPLACE RAIL/OTM | 352.07 | MH | 6,130 | |
| SIGNAL FIELD LABOR | 87.20 | MH | 1,708 | |
| SURFACE TRACK | 52.32 | MH | 911 | |
| UNLOAD BALLAST | 43.60 | MH | 760 | |
| WORK TRAIN - BALLAST | 18.00 | MH | 459 | |
| PAYROLL ASSOCIATED COSTS | | | 18,543 | |
| EQUIPMENT EXPENSES | | | 12,447 | |
| SUPERVISION EXPENSES | | | 20,380 | |
| INSURANCE EXPENSES | | | 4,498 | |
| TOTAL LABOR COST | | | 85,889 | 85,889 |
| ***** | | | | |
| MATERIAL | | | | |
| ***** | | | | |
| ANCHOR, RAIL, UNIT, 6 IN BASE, 132#/136# | 140.00 | EA | 87 | |
| BALLAST, FROM DELTA YARD | 400.00 | NT | 2,696 | |
| JOINT, COMPROMISE, LH, 3L & 4L | 2.00 | PR X | 400 | |
| JOINT, COMPROMISE, RH, 1R & 2R | 2.00 | PR X | 270 | |
| JOINT, COMPROMISE, 136#/115# LH, 3L & 4L | 2.00 | PR X | 336 | |
| JOINT, COMPROMISE, 136#/115# RH, 1R & 2R | 2.00 | PR X | 336 | |
| PLATE, TIE, 6 IN BASE, DS | 70.00 | EA | 320 | |
| PLUG, RAIL, INSULATED, BONDED, 20 FT | 4.00 | EA | 1,980 | |
| RAIL, 136 LB NEW WELDED :STANDARD CARBON | 1200.00 | LF | 14,148 | |
| SPIKE, TIMBER SCREW, 5/8X12 IN, F/ROAD XING | 564.00 | EA | 548 | |
| SPIKES, TRACK, 5/8 X 6-IN. 241 PER KEG | 241.00 | EA | 51 | |
| TIE, TRK, 10', PRE-PLATED, PANDROL, 6", ROUND HOLE | 320.00 | EA | 22,167 | |
| TIE, TRK, GRADE 5, TREATED, HARDWOOD, 8.5 FT | 20.00 | EA | 626 | |
| WELD, KIT, GENERIC FOR ALL RAIL WEIGHTS | 14.00 | KT | 798 | |
| CONC 136 OB-SEC WITH FILLER FOR WOOD | 376.00 | TF | 52,283 | |
| SIGNAL MATERIAL | 1.00 | LS | 500 | |
| STORE EXPENSES | | | 2,401 | |
| ONLINE TRANSPORTATION | | | 4,807 | |
| USE TAX | | | 6,489 | |
| OFFLINE TRANSPORTATION | | | 725 | |
| TOTAL MATERIAL COST | | | 111,968 | 111,968 |
| ***** | | | | |
| OTHER | | | | |
| ***** | | | | |
| COMPACTOR RENTAL | 21.00 | DAY | 2,100 | |
| FRONT END LOADER RENTAL | 21.00 | DAY | 10,500 | |
| TIE DISPOSAL COSTS | 340.00 | EA | 340 | |
| TOTAL OTHER ITEMS COST | | | 12,940 | 12,940 |
| PROJECT SUBTOTAL | | | | 210,797 |
| CONTINGENCIES | | | | 17,737 |
| BILL PREPARATION FEE | | | | 1,143 |
| GROSS PROJECT COST | | | | 229,677 |
| LESS COST PAID BY BNSF | | | | 0 |
| TOTAL BILLABLE COST | | | | 229,677 |

EXHIBIT "B"

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. F. RAILWAY COMPANY
 FHPM ESTIMATE FOR
 CITY OF MARYSVILLE

LOCATION - EDGECOMB

DETAILS OF ESTIMATE

PURPOSE, JUSTIFICATION AND DESCRIPTION

CONSTRUCT CROSSING AT STATE RD. MARYVILLE, WA. L.S. 406 M.P. .16
 CONSISTING OF NEW BUNGALOW, PMD3R, CANTILEVERS, BATT, CHARGERS, CABLE, METER POLE, ENGR,
 TUNDE JOINT COUPLERS, TERMINATIONS, EQUIP, ETC.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.

THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED.

CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

THIS ESTIMATE GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR MATERIAL, LABOR, AND OVERHEADS.

***** SIGNAL WORK ONLY *****

THE CITY OF MARYSVILLE TO PAY 100%.

NEED TO INSTALL TWO NEW INSULATED JOINTS.

| DESCRIPTION | QUANTITY | U/M | COST | TOTAL \$ |
|---|----------|-----|--------|----------|
| ***** | | | | |
| LABOR | | | | |
| ***** | | | | |
| ELECTRICAL LABOR F/POWER TRANS SYS | 54.00 | MH | 1,107 | |
| PLACE FIELD WELDS | 34.88 | MH | 665 | |
| SIGNAL FIELD LABOR | 1120.00 | MH | 24,567 | |
| SIGNAL SHOP LABOR | 64.00 | MH | 1,264 | |
| PAYROLL ASSOCIATED COSTS | | | 17,054 | |
| EQUIPMENT EXPENSES | | | 5,023 | |
| SUPERVISION EXPENSES | | | 18,743 | |
| INSURANCE EXPENSES | | | 4,139 | |
| TOTAL LABOR COST | | | 72,562 | 72,562 |
| ***** | | | | |
| MATERIAL | | | | |
| ***** | | | | |
| PLUG, RAIL, INSULATED, BONDED, 20 FT | 2.00 | EA | 990 | |
| WELD, KIT, GENERIC FOR ALL RAIL WEIGHTS | 4.00 | KT | 228 | |
| 4-IN PVC | 500.00 | FT | 950 | |
| BATTERY | 1.00 | EA | 5,336 | |
| BUNGALOW 6X6 | 1.00 | EA | 5,190 | |
| CABLE | 1.00 | EA | 3,136 | |
| CANTILEVER COMPLETE | 2.00 | EA | 19,000 | |
| CHARGER | 2.00 | EA | 1,018 | |
| METER POLE | 1.00 | EA | 1,500 | |
| MISC. BUNGALOW MATERIAL | 1.00 | LS | 7,302 | |
| MISC. FIELD MATERIAL | 1.00 | LS | 4,031 | |
| MISC. MATERIAL | 1.00 | EA | 2,000 | |
| PMD3R SYSTEM | 1.00 | EA | 10,531 | |
| SURFACE ROCK | 1.00 | LS | 250 | |
| TUNED JOINT COUPLERS | 4.00 | EA | 3,000 | |
| VIGILANT RECORDER | 1.00 | EA | 1,560 | |
| STORE EXPENSES | | | 1,625 | |
| USE TAX | | | 4,388 | |
| OFFLINE TRANSPORTATION | | | 823 | |
| TOTAL MATERIAL COST | | | 72,858 | 72,858 |
| ***** | | | | |
| OTHER | | | | |
| ***** | | | | |
| AC POWER SERVICE | 1.00 | LS | 1,000 | |
| CONTRACT ENGR. | 1.00 | EA | 6,000 | |
| DIRECT SHIPPING | 1.00 | EA | 6,000 | |
| EQUIPMENT RENTAL | 1.00 | LS | 14,000 | |

| | | |
|------------------------|--------|---------|
| TOTAL OTHER ITEMS COST | 27,000 | 27,000 |
| | | ----- |
| PROJECT SUBTOTAL | | 172,420 |
| CONTINGENCIES | | 17,242 |
| BILL PREPARATION FEE | | 949 |
| | | ----- |
| GROSS PROJECT COST | | 190,611 |
| LESS COST PAID BY BNSF | | 0 |
| | | ----- |
| TOTAL BILLABLE COST | | 190,611 |
| | | ===== |

EXHIBIT "B"

**CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT
FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

Gentlemen:

The undersigned, hereinafter referred to as Contractor, has entered into a Contract dated _____, 2000, with Marysville, Washington ("City") for the performance of certain work in connection with the project. The widening and the improvements to the State Street at-grade crossing in the performance of which work the Contractor will necessarily be required to conduct operations within THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Railway"), right of way and property ("Railway Property"). The Contract provides that no work shall be commenced within Railway Property until the Contractor employed in connection with said work for County executes and delivers to Railway an Agreement, in the form hereof, and shall have provided insurance of the coverage and limits specified in said Contract and Section 2 of this Agreement. If this Agreement is executed by other than the Owner, General Partner, President or Vice President of Contractor, evidence is furnished to you herewith certifying that the signatory is empowered to execute this Agreement for the Contractor.

Accordingly, as one of the inducements to and as part of the consideration for Railway granting permission to Contractor to enter upon Railway Property, Contractor, effective on the date of said Contract, has agreed and does hereby agree with Railway as follows:

SECTION 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor agrees to release Railway from any claims arising from the performance of this Agreement which Contractor or any of its employees, subcontractors, agents or invitees could otherwise assert against Railway, regardless of the negligence of Railway, except to the extent that such claims are proximately caused by the intentional misconduct or gross negligence of Railway.

Contractor shall indemnify and hold harmless Railway for all judgments, awards, claims, demands, and expenses (including attorney's fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or failure to perform any obligation hereunder. **THE LIABILITY ASSUMED BY CONTRACTOR SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

Nothing in this agreement is intended to be construed as a requirement for the indemnification against the sole negligence of the Railway, its officers, employees or agents for any work relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, performed in the State of Washington. Indemnification against liability for damages arising out of bodily injury to persons or damage to property for any work relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, performed in the State of Washington and caused by or resulting from the concurrent negligence of the Railway and the Agency and its agents or employees will be enforceable only to the extent of the negligence of the Agency and its agents and employees.

The indemnification obligation shall include all claims brought by Contractor's employees against the Railway, its agents, servants, employees or otherwise, and Contractor expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it shall adjust and settle all claims made against Railway, and shall, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway shall give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor shall proceed to adjust and handle to a conclusion such claims, and in the event of a brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

SECTION 2. INSURANCE.

(a). Before commencing any work under this Agreement, Contractor must provide and maintain in effect throughout the term of this Agreement insurance, at Contractor's expense, covering all of the work and services to be performed hereunder by Contractor and each of its subcontractors, as described below:

(1). Workers' Compensation coverage as is required by State law. **THE CERTIFICATE MUST CONTAIN A SPECIFIC WAIVER OF THE INSURANCE COMPANY'S SUBROGATION RIGHTS AGAINST THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY.**

(2). Commercial General Liability insurance covering liability, including but not limited to Public Liability, Personal Injury, Property Damage and Contractual Liability covering the obligations assumed by Contractor in Section 1, with coverage of at least \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Where explosion, collapse, or underground hazards are involved, the X, C, and U exclusions must be removed from the policy.

(3). Automobile Liability insurance, including bodily injury and property damage, with coverage of at least \$1,000,000 combined single limit or the equivalent covering any and all vehicles owned or hired by the Contractor and used in performing any of the services under this agreement.

(4). Railroad Protective Liability insurance stating The Burlington Northern and Santa Fe Railway Company is the Named Insured covering all of the liability assumed by the Contractor under the provisions of this Agreement with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. Coverage shall be issued on a standard ISO form CG 00 35 01 96 and endorsed to include ISO form CG 28 31 10 93 and the Limited Seepage and Pollution Endorsement (see attached copy).

(b). The average train traffic per 24-hour period on this route is 2 through freight trains at a timetable speed of 10 MPH.

(c). All insurance shall be placed with insurance companies licensed to do business in the States in which the work is to be performed, and with a current Best's Insurance Guide Rating of A- and Class VII, or better.

(d). In all cases except Workers' Compensation and Railroad Protective Liability coverage the certificate must specifically state that **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY IS AN ADDITIONAL INSURED.**

(e). Any coverage afforded Railway, the Certificate Holder, as an Additional Insured shall apply as primary and not excess to any coverage issued in the name of Railway.

(f). Such insurance shall be approved by the Railway before any work is performed on Railway's Property and shall be carried until all work required to be performed on or adjacent to Railway's Property under the terms of the contract is satisfactorily completed as determined by the city of Everett, Washington, and thereafter until all tools, equipment and materials not belonging to the Railway, have been removed from Railway's Property and Railway Property is left in a clean and presentable condition. The insurance herein required shall be obtained by the Contractor and Contractor shall furnish Railway with an original certificate of insurance, signed by the insurance company, or its authorized representative, evidencing the issuance of insurance coverage as prescribed in (a) 1, 2 and 3 above, plus the original Railroad Protective Liability insurance policy to:

Attention: Maintenance Field Support
The Burlington Northern and Santa Fe Railway Company
Maintenance Field Support
4501 Kansas Avenue
Kansas City, Kansas 66106

(g). The certificate of insurance shall guarantee that the policies will not be amended, altered, modified or canceled insofar as the coverage contemplated hereunder is concerned, without at least thirty (30) days notice mailed by registered mail to Railway.

(h). Full compensation for all premiums which the Contractor is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the Contract, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.

It is further distinctly understood and agreed by the Contractor that its liability to the Railway herein under SECTION 1 will not in any way be limited to or affected by the amount of insurance obtained and carried by the Contractor in connection with said Contract.

SECTION 3. CONTRACTOR REQUIREMENTS

(a). While on or about Railway Property, Contractor shall fully comply with Railway's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor shall be responsible for fully informing itself as to Railway "Contractor Requirements".

(b). Prior to entering Railway Property, each person providing labor, material, supervision, or services connected with the work to be performed on or about Railway Property shall attend a Safety Orientation session conducted or approved by Railway. Contractor shall contact Manger Public Projects, J. M. (Mike) Cowles, telephone (206) 625-6146 fax (206) 625-6115, at least thirty (30) calendar days in advance to arrange the necessary safety orientation session(s).

(c). Prior to entering Railway property, the Contractor shall prepare and implement a safety action plan acceptable to Railway. Contractor shall audit it's compliance with that plan during the course of it's work. A copy of said plan and audit results shall be kept at the work site and shall be available for inspection by Railway at all reasonable times

SECTION 4. PROTECTION OF RAILWAY FACILITIES AND RAILWAY FLAGGER SERVICES

(a). The Contractor shall give a minimum of at least thirty (30) working days notice to Ron Kazen the Railways Roadmaster at telephone (425) 304-6690, in advance of when flagging services will be required to bulletin the flaggers position and shall provide five (5) working days notice to the Roadmaster to abolish the position per union requirements.

(b). Railway flagger and protective services and devices will be required and furnished when Contractor's work activities are located over or under of and within twenty-five (25) feet measured horizontally from center line of the nearest track and when cranes or similar equipment positioned outside of 25-foot horizontally from track center line that could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

- (1). When in the opinion of the Railway's representative, it is necessary to safeguard Railway's Property, employees, trains, engines and facilities.
- (2). When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
- (3). When work in any way interferes with the safe operation of trains at timetable speeds.
- (4). When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- (5). Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

(a). Flagging services will be performed by qualified Railway flaggers. The base cost per hour for (1) flagger is \$50.00 which includes vacation allowance, paid holidays, Railway and Unemployment: Insurance, Public Liability and Property Damage Insurance, health and welfare benefits, transportation, meals, lodging and supervision, for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. These rates are subject to any increases which may result from Railway Employees-Railway Management negotiations or which may be authorized by Federal authorities. State/Contractor will be billed on actual costs in effect at time work is performed.

(1). A flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railway's representative.

(2). Each time a flagger is called, the minimum period for billing shall be the eight (8) hour basic day.

(3). The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the State/Contractor.

(4). The average train traffic per 24-hour period on this route is 2 freight trains at a timetable speed of 10 MPH.

SECTION 5. TRAIN DELAYS

No work performed by Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railway, it's lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railway Representative. Nothing shall be done or suffered to be done by the Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept at least 50 feet from the centerline of Railway's nearest track, and there shall be no vehicular crossings of Railway's track except at existing open public crossings.

Contractor shall be responsible to Railway, including its affiliated railway companies, and its tenants for damages for any unscheduled delay to freight or passenger trains that are caused by the Contractor as follows:

(a). Train Delay Damages, Passenger Trains

(1). Contractor will be billed and Contractor shall pay Railway within 30 days, as provided below, for the actual economic losses arising from loss of contractual incentive pay and bonuses, and contractual penalties resulting from passenger train delays, whether caused by Contractor, or subcontractors, or by the Railway performing Railway Work associated with this project. Railway agrees that it will not perform any act to unnecessarily cause passenger train delay.

(2). Passenger trains operate under incentive/penalty contract with the Railway. Under these arrangements, if Railway does not meet its contract service commitment, Railway may suffer loss of performance or incentive pay or be subject to a penalty payment. Contractor shall be responsible for any passenger train performance and incentive penalties

or other contractual economic losses actually incurred by Railway which are attributable to a passenger train delay caused by Contractor, or subcontractors.

(3). As example, a passenger train arrives 30 minutes after its contract service commitments with the Railway and Railway is assessed damages per terms of the contract. Contractor, and/or it's subcontractors, caused a 29 minute delay to the passenger train and therefore the Contractor is not responsible for passenger train performance incentives, penalties or other contractual economic losses actually incurred by Railway.

(4). As example, a passenger train arrives 30 minutes after its contract service commitment and Railway is assessed damages per terms of the contract. Contractor, and/or it's subcontractors, caused a 31 minute delay to the passenger train and therefore the Contractor is 100% responsible for any passenger train performance incentive, penalties or other contractual economic losses actually incurred by Railway.

(5). The contractual relationship between Railway and its passenger customers is proprietary and confidential. In the event of a passenger train delay covered by this Agreement, Railway will share information relevant to any passenger train delay to the maximum extent consistent with Railway confidentiality obligations. Damage for passenger train delays for certain passenger trains could be as high as \$50,000.00 per passenger train.

(b). Train Delays Damages, Freight Trains

(1). Contractor will be billed and Contractor shall pay Railway within 30 days, as provided herein, for the damages for freight train delays, whether caused by the State, its contractors or subcontractors, or by the Railway working for the State. The Contractor will be billed at a rate of \$304.28 (for 1998) per freight train hour for each freight train delayed as determined from Railway's records. Each delay may cause delays to more than one freight train at the same time. These rates will be updated annually and Contractor will be billed at rate per hour in effect at the time the delay occurred.

Kindly acknowledge receipt of this letter by signing and returning to the undersigned two original copies of this letter, which, upon execution by Railway, shall constitute an Agreement between us.

Yours truly,

(Contractor)

**The Burlington Northern and Santa Fe
Railway Company**

By _____

By _____
Manager Public Projects

(Title)

Accepted this ____ day of _____,
2000

Address

City, State, Zip.

**LIMITED SEEPAGE, POLLUTION AND CONTAMINATION COVERAGE
ENDORSEMENT WORDING**

In consideration of the premium charged it is understood and agreed that Exclusion f. of Coverage A. of this Policy shall not apply to the liability of the Insured resulting from seepage and/or pollution and/or contamination caused solely by:

- a) unintended fire, lightning or explosion: or
- b) a collision or overturning of a road vehicle: or
- c) a collision or overturning or derailment of a train.

Notwithstanding the foregoing it is agreed that the coverage provided by this Endorsement shall not apply to:

- 1. loss of, damage to or loss of use of property directly or indirectly resulting from sub-surface operations of the Insured, and/or removal of, loss of or damage to sub-surface oil, gas or any other substance;
- 2. any site or location used in whole or in part for the handling, processing, treatment, storage, disposal or dumping of any waste materials or substances;
- 3. the cost of evaluating and/or monitoring and/or controlling seeping and/or polluting and/or contaminating substances;
- 4. the cost of removing and/or nullifying and/or cleaning up seeping and/or polluting and /or contaminating substances on property at any time owned and/or leased and/or rented by the insured and/or under the control of the Insured.


Notwithstanding the foregoing, Item 1 does not apply to tunnels.

Index #8

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: February 9, 2015

| | |
|--|--|
| AGENDA ITEM: Local Agency Federal Aid Project Prospectus and Local Agency Funding Agreement with WSDOT for 67 th Ave NE Overlay (88 th St NE to 108 th St NE) | |
| PREPARED BY: Jeff Laycock, Project Manager | DIRECTOR APPROVAL:  |
| DEPARTMENT: Public Works, Engineering | |
| ATTACHMENTS: Vicinity Map Local Agency Project Prospectus Local Agency Funding Agreement | |
| BUDGET CODE: 10200030.548000, M1502 | AMOUNT: N/A |

SUMMARY:

The City was awarded \$497,153 in federal funding for the 67th Avenue NE Overlay project from 88th St NE to 108th St NE. The project includes replacing sidewalk ramps to meet ADA, a full width grind and 2-inch overlay, pavement repair and replacement of pavement markings.

Since this a federally funded project, the funds are administered through WSDOT and a Local Agency Agreement (agreement) and Project Prospectus (prospectus) is required in order to obligate funding. The agreement ensures that federal funds in the agreed upon amount are spent in accordance with all applicable laws and regulations. The prospectus serves as the support document for FHWA authorization of federal funds.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign and execute the Local Agency Federal Aid Project Prospectus and Local Agency Funding Agreement with WSDOT thereby securing funding for the 67th Ave NE Overlay (88th St NE to 108th St NE) project.



STREET OVERLAY GRANT

Vicinity Map
67th AVE NE Overlay
(88th ST NE to 108th ST NE)
Item 8-2

0 1,000 2,000 4,000 6,000 8,000 Feet

THE CITY OF MARYSVILLE DISCLAIMS ANY WARRANTY OR MERCHANTABILITY OR FITNESS OF THIS MAP FOR ANY PARTICULAR PURPOSE, EITHER EXPLICIT OR IMPLIED. NO REPRESENTATION OR WARRANTY IS MADE CONCERNING THE ACCURACY, COMPLETENESS, OR QUALITY OF DATA PROVIDED. ANY USER OF THIS MAP ASSUMES ALL RESPONSIBILITY FOR USE THEREOF, AND FURTHER AVAILABLE TO THE CITY OF MARYSVILLE SHALL BE FROM ANY SOURCE, BY DAMAGE, LOSS, OR LIABILITY ARISING FROM ANY USE OF THIS MAP.

Map Plotted: January, 2015



Local Agency Agreement

Agency City of Marysville
 Address 80 Columbia Avenue
Marysville, WA 98270

CFDA No. 20.205
 (Catalog of Federal Domestic Assistance)
 Project No. _____
 Agreement No. _____
For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR 225, (4) Office of Management and Budget Circulars A-102, and A-133, (5) the policies and procedures promulgated by the Washington State Department of Transportation, and (6) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name 67th Avenue Overlay Length 1.15
 Termini 88th St NE to 108th St NE

Description of Work

The 67th Ave NE overlay project between 88th St NE and 108th St NE will include a full grind and asphalt overlay, associate pavement repair, ramp replacement to meet ADA, and channelization.

Proposed Advertisement Date: April 30, 2015

| Type of Work | Estimate of Funding | | |
|---|---|----------------------------------|-----------------------------------|
| | (1) Estimated Total Project Funds | (2) Estimated Agency Funds | (3) Estimated Federal Funds |
| PE | | | |
| 0 % | | | |
| a. Agency | 22,727.00 | 22,727.00 | 0.00 |
| b. Other | | | |
| c. Other | | | |
| Federal Aid Participation Ratio for PE | | | |
| d. State | | | |
| e. Total PE Cost Estimate (a+b+c+d) | 22,727.00 | 22,727.00 | |
| Right of Way | | | |
| % | | | |
| f. Agency | | | |
| g. Other | | | |
| h. Other | | | |
| Federal Aid Participation Ratio for RW | | | |
| i. State | | | |
| j. Total R/W Cost Estimate (f+g+h+i) | | | |
| Construction | | | |
| k. Contract | 568,175.00 | 76,704.00 | 491,471.00 |
| l. Other Material Testing | 3,500.00 | 473.00 | 3,027.00 |
| m. Other | | | |
| n. Other Agency "Non-Participation" | 1,913.00 | 258.00 | 1,655.00 |
| 83.5 % | | | |
| o. Agency | 15,132.00 | 15,132.00 | 0.00 |
| Federal Aid Participation Ratio for CN | | | |
| p. State | 1,156.00 | 156.00 | 1,000.00 |
| q. Total CN Cost Estimate (k+l+m+n+o+p) | 589,876.00 | 92,723.00 | 497,153.00 |
| r. Total Project Cost Estimate (e+j+q) | 612,603.00 | 115,450.00 | 497,153.00 |

Agency Official _____ **Washington State Department of Transportation**
 By _____ By _____
 Title Jon Nehring, Mayor Director of Local Programs
 _____ Date Executed _____

Construction Method of Financing (Check Method Selected)**State Ad and Award**

- Method A - Advance Payment - Agency Share of total construction cost (based on contract award)
- Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of
\$ _____ at \$ _____ per month for _____ months.

Local Force or Local Ad and Award

- Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

_____, _____, Resolution/Ordinance No. _____

Provisions**I. Scope of Work**

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

Once written authorization is given, the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result the Agency's project becoming inactive, as described in 23 CFR 630, and subject to de-obligation of federal aid funds and/or agreement closure.

If right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which preliminary engineering phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR 225 and Office of Management and Budget circulars A-102 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR 225 - Cost Principles for State, Local, and Indian Tribal Government, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

I. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and Office of Management and Budget Circular A-133.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$500,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director of Local Programs.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

XII. Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
- (4) The Secretary is notified by the Federal Highway Administration that the project is inactive.
- (5) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

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

Additional Provisions



Local Agency Federal Aid Project Prospectus

| | | | |
|-----------------------------|--------|-------------------------|-----|
| | Prefix | Route | () |
| Federal Aid Project Number | | | |
| Local Agency Project Number | | (WSDOT Use Only) | |

| | |
|--------------------------------|------------|
| Date | 1/22/2015 |
| DUNS Number | 076658673 |
| Federal Employer Tax ID Number | 91-6001459 |

| | | |
|--|--|--|
| Agency City of Marysville | CA Agency <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Federal Program Title <input checked="" type="checkbox"/> 20.205 <input type="checkbox"/> Other |
| Project Title 67th Avenue Overlay | | Start Latitude 48° 4'27.93"N End Latitude 48° 5'30.98"N |
| | | Start Longitude 122° 8'24.10"W End Longitude 122° 8'25.88"W |
| Project Termini From - To 88th St NE 108th St NE | | Nearest City Name Marysville |
| | | Project Zip Code (+ 4) 98270 |
| From To | Length of Project 1.15 | Award Type <input checked="" type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad |
| Federal Agency <input checked="" type="checkbox"/> FHWA <input type="checkbox"/> Others | City Number 0745 | County Number 31 |
| | | County Name Snohomish |
| Congressional District District 2 | | Legislative Districts 38, 39 |
| | | Urban Area Number 1 |

| Phase | Total Estimated Cost (Nearest Hundred Dollar) | Local Agency Funding (Nearest Hundred Dollar) | Federal Funds (Nearest Hundred Dollar) | Phase Start Date | |
|--------------|--|--|---|------------------|------|
| | | | | Month | Year |
| P.E. | \$22,700 | \$22,700 | \$0 | 1 | 2015 |
| R/W | \$0 | \$0 | \$0 | N/A | |
| Const. | \$589,900 | \$92,700 | \$497,200 | 7 | 2015 |
| Total | \$612,600 | \$115,400 | \$497,200 | | |

Description of Existing Facility (Existing Design and Present Condition)

| | |
|------------------------------------|---|
| Roadway Width varies 24' to 56' | Number of Lanes varies between 2 and 5 |
|------------------------------------|---|

67th Avenue NE from 88th St NE to 108th St NE is predominantly a two lane arterial with deteriorating asphalt pavement. The intersection at 88th St NE is controlled by a signal. The intersections at 100th St NE and 108th St NE are stop sign controlled.

Description of Proposed Work

Description of Proposed Work (Attach additional sheet(s) if necessary)

The project will include a full grind and asphalt overlay, associated pavement repair, ramp replacement to meet ADA, and channelization. Other work such as replacement of detection loops and pavement fabric may also be necessary.

| | | |
|---|--------------------------|-------------------------|
| Local Agency Contact Person Jeff Laycock, PE | Title Project Manager | Phone (360) 363-8274 |
| Mailing Address 80 Columbia Avenue | City Marysville | State WA |
| | | Zip Code 98270 |

By _____

Project Prospectus Approval Approving Authority

Title Public Works Director/City Engineer Date _____

| | | |
|------------------------------|--------------------------------------|-------------------|
| Agency City of Marysville | Project Title 67th Avenue Overlay | Date 1/22/2015 |
|------------------------------|--------------------------------------|-------------------|

Type of Proposed Work

| | | |
|---|-----------------|-----------------|
| Project Type (Check all that Apply) | Roadway Width | Number of Lanes |
| <input type="checkbox"/> New Construction <input checked="" type="checkbox"/> Reconstruction <input type="checkbox"/> Railroad <input type="checkbox"/> Bridge | varies 24' -56' | varies 2-5 |
| <input type="checkbox"/> Path / Trail <input type="checkbox"/> Pedestrian / Facilities <input type="checkbox"/> Parking | | |
| <input type="checkbox"/> 3-R <input type="checkbox"/> 2-R <input type="checkbox"/> Other | | |

Geometric Design Data

| Description | Through Route | Crossroad |
|--|---|---|
| Federal Functional Classification | <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural <input type="checkbox"/> NHS <input type="checkbox"/> Principal Arterial <input checked="" type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Local Access | <input type="checkbox"/> Urban <input type="checkbox"/> Rural <input type="checkbox"/> NHS <input type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Local Access |
| Terrain | <input checked="" type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain | <input type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain |
| Posted Speed | 35 MPH | |
| Design Speed | N/A | |
| Existing ADT | Greater than 5000 | |
| Design Year ADT | N/A | |
| Design Year | N/A | |
| Design Hourly Volume (DHV) | N/A | |

Performance of Work

| | | |
|--|-------------------|-----------------|
| Preliminary Engineering Will Be Performed By City of Marysville | Others 0 % | Agency 100 % |
| Construction Will Be Performed By Contractor | Contract 100 % | Agency 0 % |

Environmental Classification

| | |
|---|---|
| <input type="checkbox"/> Class I - Environmental Impact Statement (EIS) <input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement <input type="checkbox"/> Class III - Environmental Assessment (EA) <input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement | <input checked="" type="checkbox"/> Class II - Categorically Excluded (CE) <input type="checkbox"/> Projects Requiring Documentation (Documented CE) |
|---|---|

Environmental Considerations

None.

| | | |
|------------------------------|--------------------------------------|-------------------|
| Agency City of Marysville | Project Title 67th Avenue Overlay | Date 1/22/2015 |
|------------------------------|--------------------------------------|-------------------|

Right of Way No Right of Way Required

* All construction required by the contract can be accomplished within the existing right of way.

 Right of Way Required No Relocation Relocation Required

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

No utility relocation will be required. Existing utility covers may require adjustment to finish grade.

FAA Involvement

Is any airport located within 3.2 kilometers (2 miles) of the proposed project? Yes No

Remarks

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Agency City of Marysville

Date _____

By _____
Mayor/Chairperson

Index #5

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: February 9, 2015

| | | |
|--|--|----------------|
| AGENDA ITEM: Public Hearing to consider the proposed vacation of 25 th Avenue NE and the existing stormwater pond and the request to waive compensation for said vacation. | AGENDA SECTION: Public Hearing | |
| PREPARED BY: Chris Holland, Planning Manager | APPROVED BY: | |
| ATTACHMENTS: 1. Resolution 2372 2. Petition for Vacation of 25 th Avenue NE, including: <ul style="list-style-type: none"> • Exhibit A – AERO Construction Co. Bid • Exhibit B – Lakewood Station Preliminary Site Plan • Exhibit C – Future ROW Dedication for realigned roadway 3. Memo from Chris Holland, Planning Manager, 12/23/14 4. Staff & Public Agency Comments 5. Chapter 12.32 MMC, <i>Vacation of Streets and Alleys</i> 6. Ordinance | MAYOR | CAO |
| | BUDGET CODE: | |
| BUDGET CODE: | | AMOUNT: |

DESCRIPTION:

On January 12, 2014 City Council passed Resolution No. 2372 setting a public hearing date on February 9, 2015 to consider the petition from Smokey Point Commercial, LLC (applicant), proposing to vacate a portion of 25th Avenue NE and an existing stormwater detention pond, located north of 172nd Street NE (SR 531), in conjunction with the construction of the Lakewood Station Binding Site Plan. The resolution recommended City Council waive all compensation of the vacated right-of-way based on the factors outlined in Resolution No. 2372.

Staff is recommending Council approve the proposed vacation of 25th Avenue NE and the existing stormwater detention pond, subject to the following conditions, as reflected in the attached Ordinance:

- (a) Vacation of 25th Avenue NE and the stormwater detention pond shall not be effective until the applicant has constructed a permanent or temporary public access from 25th Avenue NE to 172nd Street NE (SR 531), as approved by the City Engineer;
- (b) 25th Avenue NE shall be vacated subject to reservation of a perpetual easement in favor of the City of Marysville for utilities, across, under and through that portion of the property; and
- (c) The applicant shall be required to construct and dedicate, to the City of Marysville, a new public roadway realigning 25th Avenue NE to the west to a mini RAB and construct a RAB at 172nd Street NE (SR 531), to a public standard; including sidewalks, planter strips and decorative lighting, as approved by the City Engineer and Washington State Department of Transportation.

| |
|---|
| RECOMMENDED ACTION: Approve the Ordinance vacating 25 th Avenue NE and the stormwater detention facility, subject to the conditions reflected in the ordinance, and waive compensation for the vacation. |
| COUNCIL ACTION: |

CITY OF MARYSVILLE
Marysville, Washington
RESOLUTION NO. 2372

A RESOLUTION OF THE CITY OF MARYSVILLE ESTABLISHING FEBRUARY 9, 2015 AS THE DATE UPON WHICH A HEARING SHALL BE HELD BEFORE THE MARYSVILLE CITY COUNCIL TO CONSIDER VACATION OF A PORTION OF 25th AVENUE NE, AND A STORMWATER DETENTION POND, LOCATED NORTH OF 172nd STREET NE (SR 531) IN THE CITY OF MARYSVILLE, AND CONSIDER WAIVING COMPENSATION FOR SAID VACATION.

WHEREAS, Smokey Point Commercial, LLC, petitioned the City of Marysville to vacate a portion of 25th Avenue NE and an existing stormwater detention pond, north of 172nd Street NE (SR 531), in the City of Marysville; and

WHEREAS, on January 12, 2015, the Marysville City Council considered the petition and directed staff to schedule a public hearing pursuant to Chapter 12.32 of the Marysville Municipal Code; NOW, THEREFORE,

BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, AS FOLLOWS:

Section 1. Pursuant to RCW 35.79.010, incorporated by reference in RCW 35A.47.020, and pursuant to Marysville Municipal Code Section 12.32.020, **February 9, 2015** shall be and hereby is established as the time at which the City Council of the City of Marysville shall hold a public hearing at the Marysville City Hall at 7:00 PM or such later hour as is available, to consider the right-of-way vacation petition of Smokey Point Commercial, LLC, requesting vacation of a portion of 25th Avenue NE and an existing stormwater detention pond, generally located north of 172nd Street NE (SR 531), which is legally described in **Exhibits A & C** and depicted in **Exhibits B & D**, attached hereto.

Section 2. Pursuant to Marysville Municipal Code Section 12.32.020, when the vacation is initiated by the City of Marysville, or the City Council deems it in the best interest of the City of Marysville, the Council may waive all or any portion of such compensation. At the time the Council initially has the petition before it in order to set the matter for public hearing by resolution, the Council shall consider the reports of the City Engineer and/or the Community Development Director shall determine whether or not it will require that the City be compensated as a condition of the vacation.

Section 3. The City Engineer and Community Development Director have recommended the Council waive all compensation of the vacated right-of-way and stormwater detention pond, based on the following factors:

- (a) At the public hearing for the Lakewood Station Binding Site Plan, Washington State Department of Transportation (WSDOT) testified that a signal or a RAB would not be allowed to be installed at the intersection of 172nd Street NE (SR 531) and 25th Avenue NE, due to its close proximity to the signalized intersection of 27th Avenue NE to the east. WSDOT however, does support construction of a RAB further west at approximately the 2300 Block.

(b) The relocation of 25th Avenue NE, west to a RAB located at 23rd Avenue NE, will provide a public benefit by allowing existing residents, future residents and patrons of the proposed commercial development improved access to 172nd Street NE (SR 531). Currently, 25th Avenue NE is a non-signalized intersection which makes it difficult to make left turns during the AM and PM peak hours.

(c) Vacating 25th Avenue NE and the stormwater detention pond provides an opportunity for commercial development that would otherwise be difficult due to access restrictions required by WSDOT, which would benefit the public through increased tax revenue to the City of Marysville.

(d) The applicant is proposing to construct and dedicate a new roadway alignment, to a public standard; including sidewalks, planter strips and decorative lighting, at no cost to the public. The cost for constructing the road, **not including** the RAB at 172nd Street NE (SR 531), decorative lighting and landscaping is approximately \$776,692.00.

(e) The dedication of new public right-of-way is approximately 86,733 SF, **not including** dedication of right-of-way for the construction of the RAB and frontage improvements on 172nd Street NE (SR 531). The applicant has requested 87,342 SF of existing right-of-way be vacated.

PASSED by the City Council and APPROVED by the Mayor this 12th day of January, 2015.

CITY OF MARYSVILLE

By: [Signature]
JON NEHRING, MAYOR

Attest:
By: [Signature]
APRIL O'BRIEN, DEPUTY CITY CLERK

Approved as to form:
By: [Signature]
CITY ATTORNEY

Date of Publication: 1/17/15
Effective Date: 1/22/15
(5 days after publication)

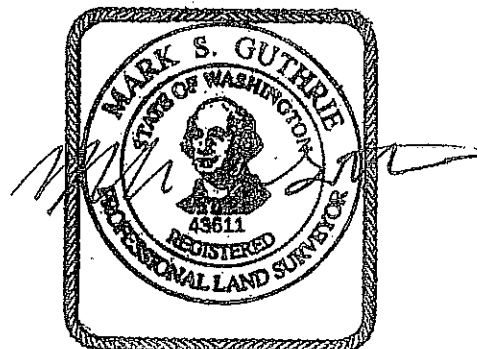
EXHIBIT A**25TH AVENUE NE VACATION
LEGAL DESCRIPTION**

THE EAST 30.00 FEET OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M.;
EXCEPT THE SOUTH 30.00 FEET THEREOF.

TOGETHER WITH THE WEST 30.00 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M.;
EXCEPT THE SOUTH 40.00 FEET THEREOF.

TOGETHER WITH THE FOLLOWING DESCRIBED TRACT OF LAND:
COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 20;
THENCE SOUTH 89°03'37" WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER 356.18 FEET;
THENCE NORTH 00°56'23" WEST 40.00 FEET TO THE NORTH LINE OF A TRACT OF LAND CONVEYED TO THE STATE OF WASHINGTON BY WARRANTY DEED RECORDED UNDER AUDITOR'S FILE NUMBER 200101290045, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;
THENCE SOUTH 89°03'37" WEST ALONG SAID NORTH LINE 253.14 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET, THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;
THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 91°44'11" AN ARC DISTANCE OF 32.02 FEET TO A POINT ON THE EAST RIGHT OF WAY OF 25TH AVENUE NE;
THENCE SOUTH 00°47'48" WEST ALONG SAID EAST RIGHT OF WAY 20.62 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 40.00 FEET OF SAID SOUTHWEST QUARTER;
THENCE NORTH 89°03'37" EAST ALONG SAID NORTH LINE 20.62 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.



3-5-13

EXHIBIT B

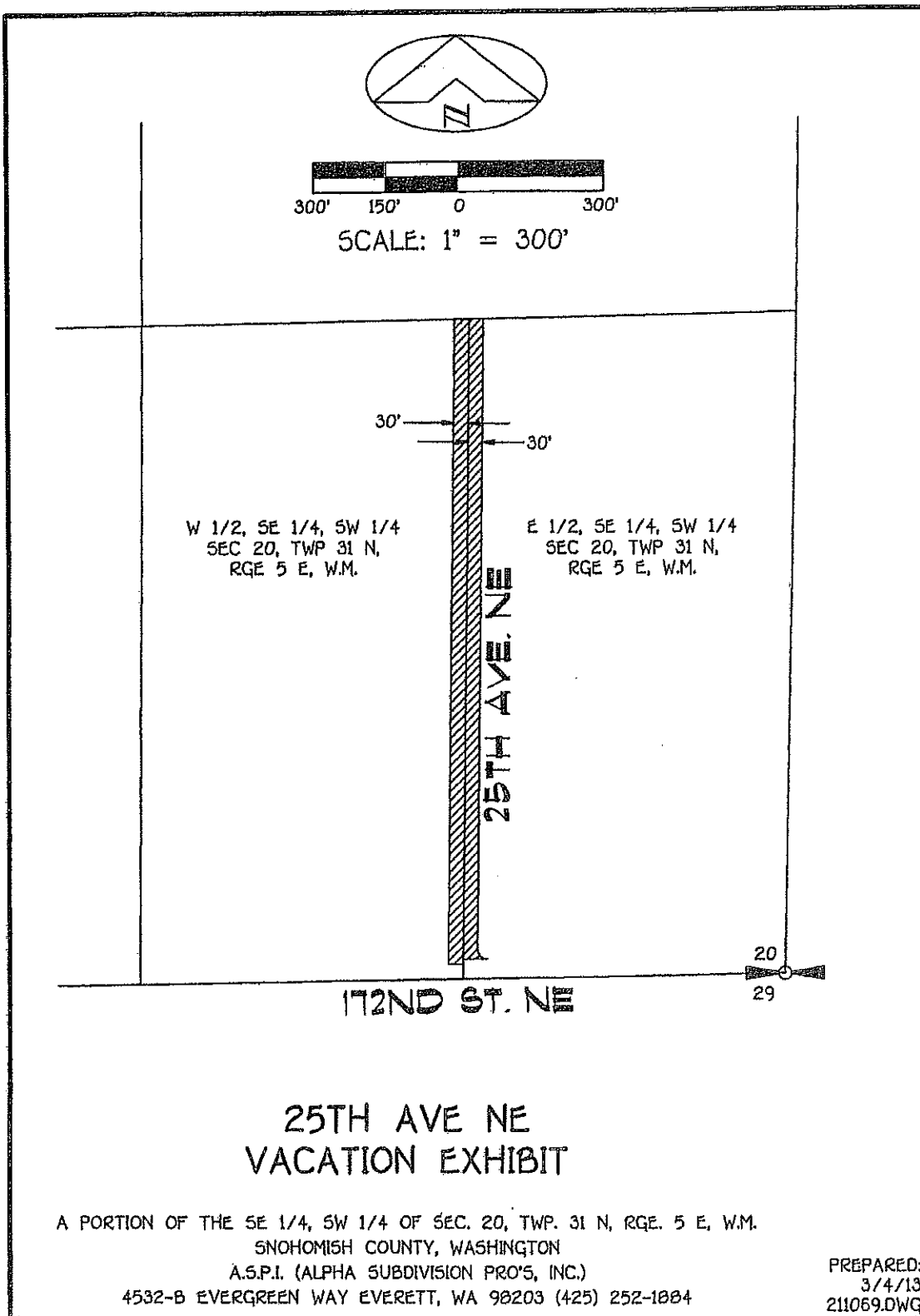
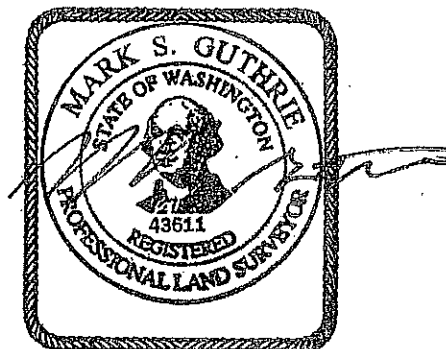


EXHIBIT C

POND AREA VACATION LEGAL DESCRIPTION

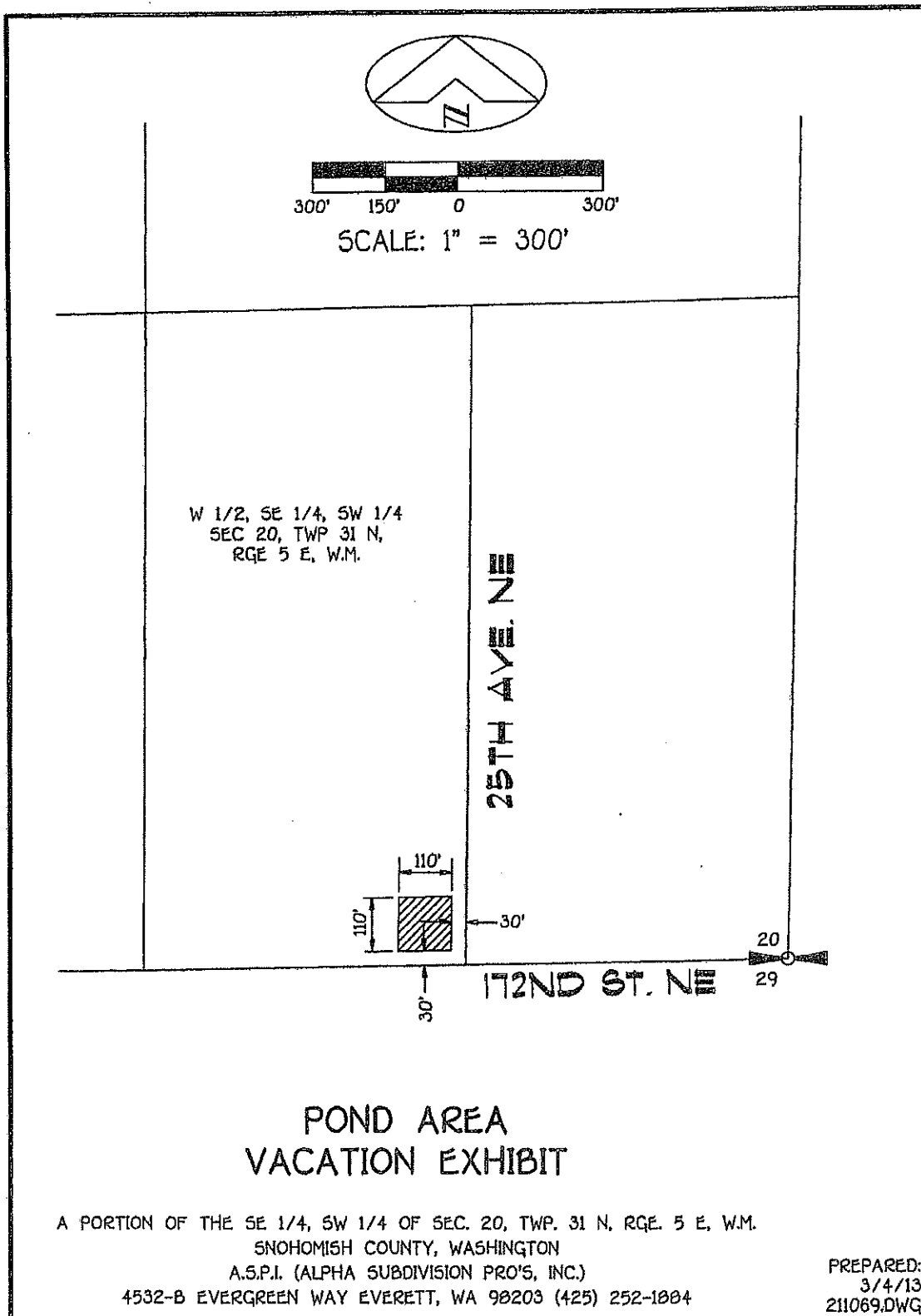
THE NORTH 110 FEET OF THE SOUTH 140 FEET OF THE WEST 110 FEET OF THE EAST 140 FEET OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M., AS CONVEYED TO SNOHOMISH COUNTY BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NUMBER 9304070110, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.



3-5-13

EXHIBIT D



PETITION FOR VACATION OF STREET

1. See attached Legal Descriptions for areas to be vacated and areas to be dedicated to the City of Marysville.
2. Smokey Point Commercial, LLC and Smokey Point Apartments, LLC are the owner of 100% of all property abutting 25th Ave NE. Both entities have the same ownership.
3. Vacation of 25th Ave. NE will meet the following criteria:
 - a. It will provide a public benefit

Response: At the Lakewood Station Binding Site Plan public hearing, Washington State Department of Transportation (WSDOT) testified that a signal or roundabout (RAB) would not be allowed to be installed at the intersection of 172nd Street NE (SR 531) and 25th Avenue NE, due to its close proximity to the signalized intersection of 27th Avenue NE. Based on this testimony, our team has been working closely with WSDOT to revise the current intersection in order to relocate this intersection west to a new intersection (23rd Avenue NE) and construct a RAB, which would comply with WSDOT spacing standards on a State Highway (SR 531). The relocation of 25th Avenue NE from its current configuration to a RAB located at 23rd Avenue NE, will provide a public benefit by allowing existing residents, future residents and patrons of the proposed commercial development improved access to 172nd Street NE (SR 531).. In addition, it opens up the opportunity for more commercial opportunities and tenant prospects because of the increased access to 172nd Street NE (SR 531), which would benefit the public through increased tax revenue to the City of Marysville..

- b. It will not adversely affect the street pattern of circulation of the immediate area of the community as a whole.

Response: There will be no adverse affect to the local traffic circulation. In fact, the overall design of the new RAB at 23rd Avenue NE will drastically improve the current street pattern and circulation. The ability to access 172nd Street NE (SR 531) with a new RAB will greatly enhance the safety for those currently using 25th Ave NE. Since WSDOT was not in favor of allowing either a signalized intersection, nor a RAB, at the current 25th Ave and 172nd Street NE intersection, the new 23rd Ave location will be utilized to drastically improve the ability for the neighborhoods to the north on 25th Ave to take a east-bound turning movement.

- c. The public need will not be adversely affected.

Response: There will be no adverse affect to the public with the proposed vacation and dedication, as proposed.

In addition, construction and dedication of the roadway sections of 23rd Avenue NE, 174th Street NE, and the RAB will be at the developer's expense. The estimated cost to construct the proposed improvements is approximately \$551,753, based on a three (3) lane roadway section including two travel lanes, a center turn lane, curbs, gutters and sidewalks, and the RAB. The new dedicated and improved length of roadway will be 1,717 lineal feet. In addition to the roadway improvement will be the half-street dedication and improvement of 176th Street NE at the north end of the Phase 1 Apartments. The new dedicated and improved length or roadway will be 631 lineal feet, at an estimated cost of \$101,850. This would be in comparison to the cost of the vacated right-of-way, which is approximately 1,285 lineal feet and an estimated cost of \$224,938.

- d. The street is not contemplated or needed for future public use.

Response: The area to be vacated will be replaced by an amount of area greater than what is being vacated and will provide the same public use as its current configuration with improved access to 172nd Street NE (SR 531).

- e. No abutting owner will become landlocked or have his access substantially impaired.


Response: No abutting owner will become landlocked or have his or her access substantially impaired. Smokey Point Commercial, LLC and Smokey Point Apartments, LLC owns all abutting property along the reconfigured roadway.

4. Smokey Point Commercial, LLC and Smokey Point Apartments, LLC, hereby agrees to pay all fees and charges required by Chapter 12.32 MMC relating to vacation of street(s).

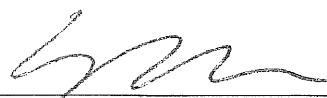
Pond Area: The current detention pond located at the corner of 25th Avenue NE 172nd Street NE (SR 531) is being requested for vacation, in addition to the above reference road areas. The current use and function of the pond will be replaced per the civil plans prepared by Omega Engineering and approved by the City of Marysville Community Development Department. These approvals are being issued through the Binding Site Plan and Building Permit process.

Dated October 8, 2014

Smokey Point Commercial, LLC

By: 
Steven J. Malsam, Manager

Smokey Point Apartments, LLC

By: 
Steven J. Malsam, Manager

Land Area Requested to be Vacated

25th Ave NE 76,887 sq.ft.

Pond Area: 10,455 sq.ft. Total Area: to be vacated: 87,342 sq.ft.

Land Area Proposed to be dedicated to the City of Marysville

25th Ave NE 88,733 sq.ft.

Additional area to be dedicated to WSDOT along 172nd St. NE (TBD – Plans currently under review by WSDOT)

All these areas are shown on the attached drawings.

EXHIBIT A

AERO Construction Co.

3827 Bickford Avenue,
P.O. Box 295
Snohomish, WA. 98290
Phone 425-334-2475
Fax 425-397-6196

September 10, 2014

Smokey Point Commercial LLC

Attention: Ed Babbitt

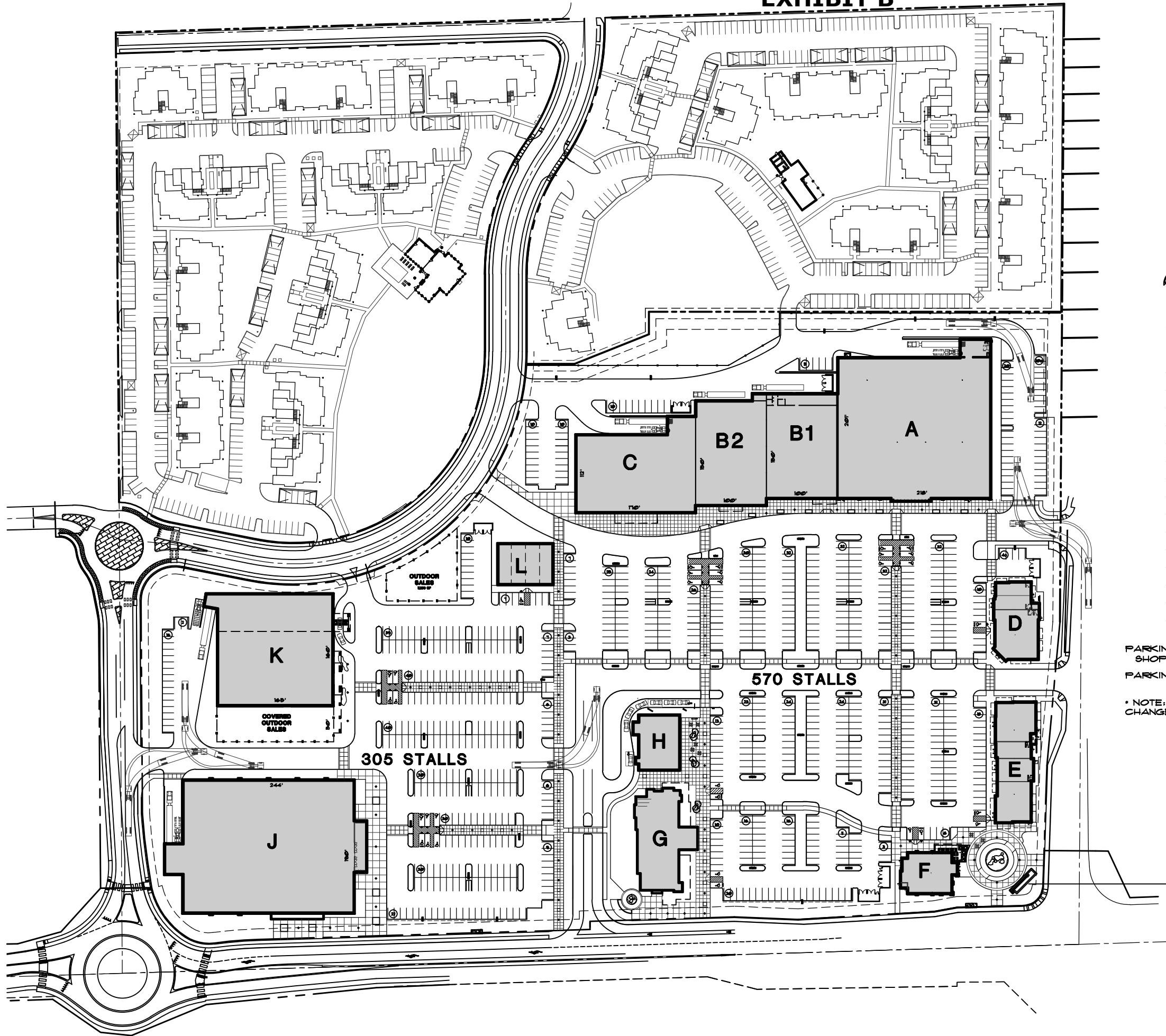
Re: Smokey Point Commercial - Roadway Improvements Budget
Aero Job Number 511

| Description | Quantity | Unit | Price | Subtotal | Notes |
|---|-----------|------|-----------|-------------------|--------------------|
| New 25th Ave NE Through 174th Street NE, including 23rd Ave. NE to North side of 172nd | | | | | |
| Fine Grade Curbs | 4,145.00 | LF | 3.40 | 14,093.00 | |
| 18" Vertical Curb & Gutter | 3,050.00 | LF | 15.00 | 45,750.00 | |
| 22" Roundabout Type 1 Rolled Curb | 215.00 | LF | 24.00 | 5,160.00 | |
| 18" Roundabout Type 2 Rolled Curb | 880.00 | LF | 18.00 | 15,840.00 | |
| Perpendicular Curb Ramps | 10.00 | EA | 1,200.00 | 12,000.00 | |
| Parallel Curb Ramps | 8.00 | EA | 900.00 | 7,200.00 | |
| Fine Grade Walks, Aprons and Islands | 22,945.00 | SF | 0.50 | 11,472.50 | |
| 5'x4" Double Ribbon Sidewalk | 15,300.00 | SF | 6.00 | 91,800.00 | |
| 5'x6" Stamped Concrete Apron | 1,400.00 | SF | 11.40 | 15,960.00 | Outside Roundabout |
| 6" Stamped Concrete Crosswalk | 530.00 | SF | 11.40 | 6,042.00 | |
| 6" Stamped Concrete Roundabout Islands | 5,715.00 | SF | 11.40 | 65,151.00 | |
| 3" Depth Crushed Rock at Concrete Improvements | 460.00 | TON | 26.65 | 12,259.00 | |
| Fine Grade Asphalt | 65,925.00 | SF | 0.20 | 13,185.00 | |
| 2" Class B Asphalt | 7,325.00 | SY | 9.75 | 71,418.75 | |
| 4" ATB Asphalt | 7,325.00 | SY | 15.25 | 111,706.25 | |
| 3" Depth Crushed Rock at Asphalt Improvements | 1,040.00 | TON | 26.65 | 27,716.00 | |
| Channelization and Signage | 1.00 | LS | 25,000.00 | 25,000.00 | |
| Total New Road Improvements | | | | 551,753.50 | Tax Not Included |

| | | | | | |
|--|-----------|-----|-------|-------------------|------------------|
| Existing 25th Ave NE | | | | | |
| Fine Grade Curbs | 1,353.00 | LF | 3.40 | 4,600.20 | |
| 18" Vertical Curb & Gutter | 1,353.00 | LF | 15.00 | 20,295.00 | |
| Fine Grade Walks | 6,765.00 | SF | 0.50 | 3,382.50 | |
| 4" Sidewalk | 6,765.00 | SF | 6.00 | 40,590.00 | |
| 3" Depth Crushed Rock at Concrete Improvements | 140.00 | TON | 26.65 | 3,731.00 | |
| Fine Grade Asphalt | 46,260.00 | SF | 0.20 | 9,252.00 | |
| 2" Class B Asphalt | 5,140.00 | SY | 9.75 | 50,115.00 | |
| 4" ATB Asphalt | 5,140.00 | SY | 15.25 | 78,385.00 | |
| 3" Depth Crushed Rock at Asphalt Improvements | 720.00 | TON | 26.65 | 19,188.00 | |
| Total Existing Road Improvements | | | | 224,938.50 | Tax Not Included |

Bid Notes: This proposal is budgetary only at this time.
This proposal does not include traffic control.

EXHIBIT B



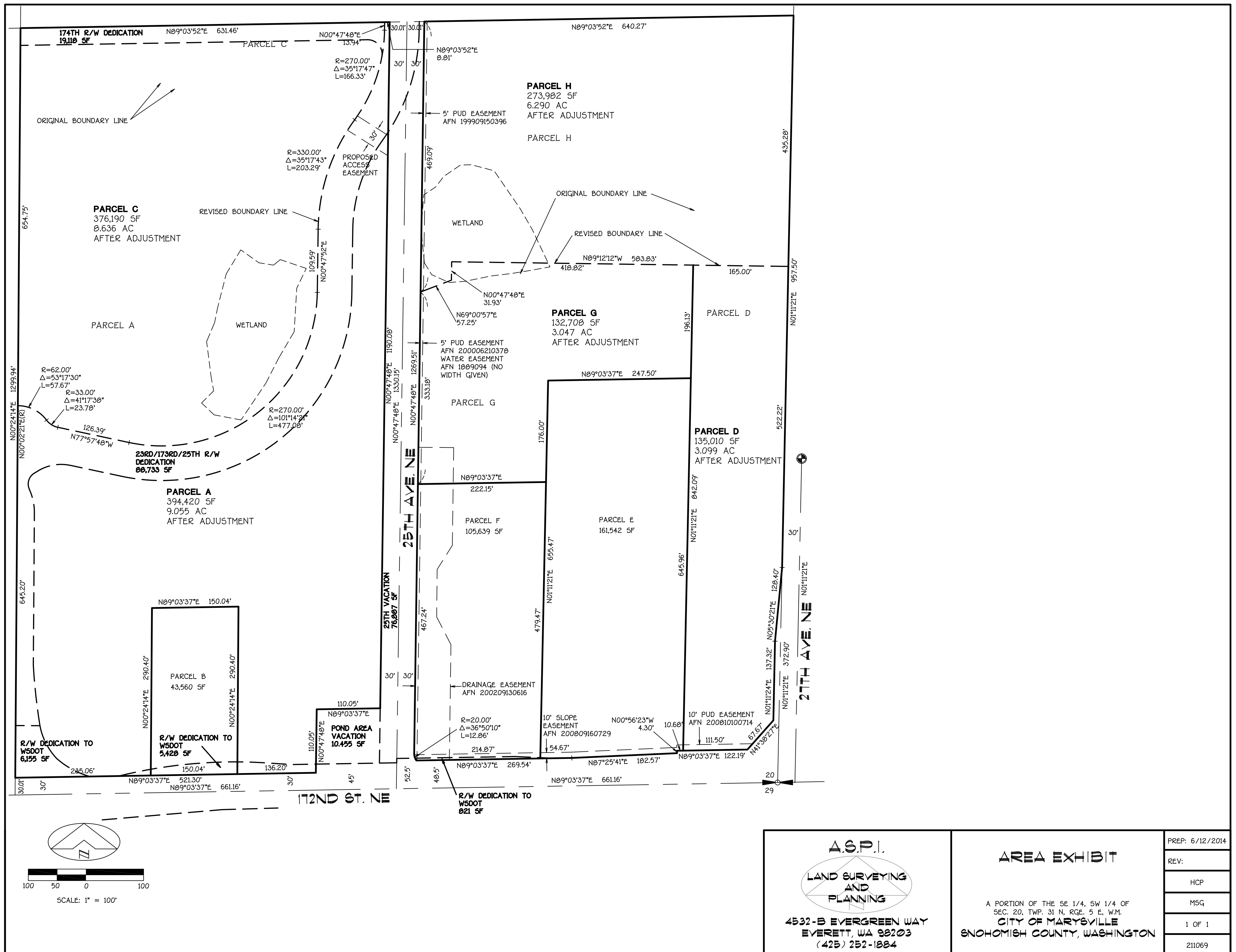
PRELIMINARY SITE PLAN
 SCALE: 1"=50'-0" 10-8-14

PROJECT DATA

| LABEL | BUILDING FOOTPRINT | BUILDING USE |
|-------|--------------------|---------------|
| A | 45,000 SF | RETAIL ANCHOR |
| B1 | 15,000 SF | RETAIL ANCHOR |
| B2 | 15,000 SF | RETAIL ANCHOR |
| C | 20,000 SF | RETAIL ANCHOR |
| D | 6,615 SF | RETAIL SHOPS |
| E | 9,285 SF | RETAIL SHOPS |
| F | 4,500 SF | RESTAURANT |
| G | 9,575 SF | RESTAURANT |
| H | 4,800 SF | RETAIL SHOPS |
| J | 49,000 SF | RETAIL ANCHOR |
| K | 26,800 SF | RETAIL ANCHOR |
| | 8,250 SF | COVERED SALES |
| | 7,000 SF | OUTDOOR SALES |
| L | 5,000 SF | RETAIL SHOPS |
| TOTAL | 225,825 SF | |

PARKING REQUIRED:
 SHOPPING CENTER: * 218,825 SF @ 1/ 250 SF = 875 STALLS
 PARKING PROVIDED: 875 STALLS (1/ 250 SF)

* NOTE: ALL USES ARE PROPOSED AND SUBJECT TO CHANGE



A.S.P.I.
LAND SURVEYING
AND
PLANNING
4532-B EVERGREEN WAY
EVERETT, WA 98203
(425) 252-1884

AREA EXHIBIT

A PORTION OF THE SE 1/4, SW 1/4 OF
SEC. 20, TWP. 31 N, RGE. 5 E, W.M.
CITY OF MARYSVILLE
SNOHOMISH COUNTY, WASHINGTON

| |
|-----------------|
| PREP: 6/12/2014 |
| REV: |
| HCP |
| M5G |
| 1 OF 1 |
| 211069 |



COMMUNITY DEVELOPMENT DEPARTMENT
 80 Columbia Avenue ♦ Marysville, WA 98270
 (360) 651-5100 ♦ (360) 651-5099 FAX

MEMORANDUM

DATE: December 23, 2014
TO: Marysville City Council
FROM: Chris Holland, Planning Manager
RE: Lakewood Station – 25th Avenue NE and Stormwater Detention Pond Vacation
CC: Gloria Hirashima, CAO/CD Director
 Kevin Nielsen, PE, PW Director

The Community Development Department (CD) received a petition from Smokey Point Commercial, LLC, (applicant) proposing to vacate a portion of 25th Avenue NE and an existing stormwater detention pond, located north of 172nd Street NE (SR 531), in conjunction with the construction of the Lakewood Station Binding Site Plan. The petition submitted represents 100% of the ownership of the properties fronting the proposed vacated portion of 25th Avenue NE and the stormwater detention pond.

Rather than compensating the City for the vacated portion of 25th Avenue NE and the stormwater detention pond, the applicant is proposing to construct a new public roadway, realigning 25th Avenue NE to the west to a mini roundabout (RAB) and constructing a full RAB at 172nd Street NE (SR 531) that would provide improved access onto the state highway. The applicant is also proposing to collect and treat stormwater, associated with the vacated stormwater detention pond, in accordance with the 2005 Stormwater Management Manual for Western Washington and MMC Title 14 *Water and Sewers*.

Marysville Municipal Code (MMC) 12.32.020(2) provides guidance for compensation of vacated area, and includes the following language:

“When the vacation is initiated by the city of Marysville, or the city council deems it in the best interest of the city of Marysville, the council may waive all or any portion of such compensation. At the time the city council initially has the petition before it in order to set the matter for public hearing by resolution the city council shall consider the reports of the city engineer and/or the city planner and shall determine whether or not it will require that the city be compensated as a condition of vacation.”

In all cases where Council requires compensation for vacated right-of-way, an appraisal of the right-of-way is required to be made. One of the options identified in MMC 12.32.050, is to obtain the assessed value of comparable abutting properties from the records of the Snohomish County Assessor. CD obtained the 2015 Snohomish County assessed value(s) of the comparable abutting properties, and calculated the total assessed value of the proposed vacation at approximately \$591,305.34, based on an average assessed value of \$6.77 per SF.

| APN | OWNER | ACREAGE | SF | ASSESSED VALUE | ASSESSED VALUE PER SF |
|--|-----------------------------|---------|---------|----------------|-----------------------|
| 31052000302400 | SMOKEY POINT COMMERCIAL LLC | 16.89 | 735,728 | \$4,396,100 | \$5.98 |
| 31052000304600 | SMOKEY POINT COMMERCIAL LLC | 1 | 43,560 | \$304,900 | \$7.00 |
| 31052000303600 | SMOKEY POINT COMMERCIAL LLC | 0.93 | 40,511 | \$283,600 | \$7.00 |
| 31052000302900 | SMOKEY POINT COMMERCIAL LLC | 2.7 | 117,612 | \$822,500 | \$6.99 |
| 31052000302800 | SMOKEY POINT COMMERCIAL LLC | 3.88 | 169,013 | \$1,185,000 | \$7.01 |
| 31052000302600 | SMOKEY POINT COMMERCIAL LLC | 4.7 | 204,732 | \$1,432,900 | \$7.00 |
| 31052000302500 | SMOKEY POINT COMMERCIAL LLC | 2.9 | 126,324 | \$884,300 | \$7.00 |
| 31052000302700 | SMOKEY POINT COMMERCIAL LLC | 4.7 | 204,732 | \$1,273,100 | \$6.22 |
| AVERAGED ASSESSED VALUE PER SF FRONTING 25TH AVENUE NE | | | | | \$6.77 |
| TOTAL ASSESSED VALUE FOR VACATED ROW (87,342 SF x \$6.77) | | | | | \$591,305.34 |

Another option outlined in MMC 12.32.050 is to require the applicant to obtain a professional appraisal stating the fair market value of the right-of-way proposed for vacation. Recently, the City of Marysville purchased property for the State Avenue Improvement Project (116th Street NE to 136th Street NE) at approximately \$10.00+/- per square foot. Based on the rate the City paid for acquisition of property for this improvement project, the total assessed value of the proposed right-of-way vacation would be approximately \$873,420.00. Therefore, it can be assumed that the value of the property proposed to be vacated would be somewhere between \$591,305.34 and \$873,420.00.

After reviewing the proposal, CD is recommending Council waive compensation, as proposed by the applicant, based on the following factors:

- At the public hearing for the Lakewood Station Binding Site Plan, Washington State Department of Transportation (WSDOT) testified that a signal or a RAB would not be allowed to be installed at the intersection of 172nd Street NE (SR 531) and 25th Avenue NE, due to its close proximity to the signalized intersection of 27th Avenue NE to the east. WSDOT however, does support construction of a RAB further west at approximately the 2300 Block.
- The relocation of 25th Avenue NE, west to a RAB located at 23rd Avenue NE, will provide a public benefit by allowing existing residents, future residents and patrons of the proposed commercial development improved access to 172nd Street NE (SR 531). Currently, 25th Avenue NE is a non-signalized intersection which makes it difficult to make left turns during the AM and PM peak hours.
- Vacating 25th Avenue NE and the stormwater detention pond provides an opportunity for commercial development that would otherwise be difficult due to access restrictions required by WSDOT, which would benefit the public through increased tax revenue to the City of Marysville.
- The applicant is proposing to construct and dedicate a new roadway alignment, to a public standard; including sidewalks, planter strips and decorative lighting, at no cost to the public. The cost for constructing the road, **not including** the RAB at 172nd Street NE (SR 531), decorative lighting and landscaping is approximately \$776,692.00.

- . The dedication of new public right-of-way is approximately 86,733 SF, **not including** dedication of right-of-way for the construction of the RAB and frontage improvements on 172nd Street NE (SR 531). The applicant has requested 87,342 SF of existing right-of-way be vacated.

At the time the Council initially has the petition before it in order to set the matter for public hearing by resolution, the Council shall consider the reports of the City Engineer and/or the Community Development Director shall determine whether or not it will require that the City be compensated as a condition of the vacation.

A resolution has been prepared establishing February 9, 2015 as the date upon which a public hearing shall be held before City Council to consider vacation of a portion of 25th Avenue NE, and the existing stormwater detention pond.



REQUEST FOR REVIEW

Community Development Department ♦ 80 Columbia Avenue ♦ Marysville, WA 98270
 (360) 363-8100 ♦ (360) 651-5099 FAX ♦ Office Hours: Mon - Fri 7:30 AM - 4:00 PM

| PROJECT INFORMATION | | | | | | | | | |
|---|---|-------------------------------|--------|---|---|--|-------------------------|---|-----|
| File Number | PA 12014 | | | Date Sent | 10.09.14 | | Please Return by | 10.20.14 | |
| Project Title | Lakewood Station - 25 th Avenue NE and Pond Vacation | | | Related File Number(s) | | | | | |
| Project Description | Vacation of 25 th Avenue NE and the existing stormwater pond located on the northwest corner of 25 th Avenue NE and 172 nd Street NE. | | | | | | | | |
| BACKGROUND SUMMARY | | | | | | | | | |
| Owner/Applicant | Smokey Point Commercial, LLC | | | | | | | | |
| Site Address | 2403 & 2609 172 nd Street NE; 17526 25 th Avenue NE | | | APN(s) | 31052000302400, 31052000304600, 31052000303600, 31052000302600, 31052000302800, 31052000302900, 31052000302500, 31052000302700 | | | | |
| Acreage (SF) | N/A | | | Section | 20 | Township | 31N | Range | 05E |
| Comprehensive Plan | MU, GC | Zoning | MU, GC | Shoreline Environment | | | N/A | | |
| REVIEWING AGENCIES | | | | | | | | | |
| Marysville | Local Agencies & Districts | | | State & Federal | | County | | Other | |
| <input type="checkbox"/> Building <input checked="" type="checkbox"/> Fire District <input type="checkbox"/> LD (Anne Miller) <input type="checkbox"/> LD (Deryl Taylor) <input checked="" type="checkbox"/> LD (Shawn Smith) <input type="checkbox"/> Parks <input checked="" type="checkbox"/> Police <input checked="" type="checkbox"/> Public Works (John Cowling) <input checked="" type="checkbox"/> Public Works (Kari Chennault) <input type="checkbox"/> Public Works (Karen Latimer) <input type="checkbox"/> Public Works (Jesse Hannahs) <input type="checkbox"/> | <input type="checkbox"/> Arlington (city) <input type="checkbox"/> Arlington Airport <input type="checkbox"/> Community Transit <input type="checkbox"/> Everett (city) <input type="checkbox"/> Frontier <input type="checkbox"/> Lake Stevens (city) <input type="checkbox"/> Lake Stevens SD 4 <input type="checkbox"/> Lakewood SD 306 <input type="checkbox"/> Marysville SD 25 <input type="checkbox"/> PUD No. 1 (electric) <input type="checkbox"/> PUD No. 1 (water) <input type="checkbox"/> <input type="checkbox"/> | | | <input type="checkbox"/> US Army Corps of Engineers <input type="checkbox"/> BNSF <input type="checkbox"/> DOE (Bellevue) <input type="checkbox"/> DOE (Olympia - Env. Review) <input type="checkbox"/> DOE (SEPA - Greta Stough) <input type="checkbox"/> DOE (Shorelands - G, Tallent) <input type="checkbox"/> WDFW <input type="checkbox"/> WSDOT <input type="checkbox"/> WUTC <input type="checkbox"/> <input type="checkbox"/> | | <input type="checkbox"/> Health District <input type="checkbox"/> Planning <input type="checkbox"/> Public Works - Land Development <input type="checkbox"/> Public Works <input type="checkbox"/> <input type="checkbox"/> | | <input type="checkbox"/> Olympic Pipeline <input type="checkbox"/> Puget Sound Energy <input type="checkbox"/> Stillaguamish Tribe <input type="checkbox"/> Tulalip Tribes <input type="checkbox"/> <input type="checkbox"/> | |
| PROJECT MANAGER | | | | | | | | | |
| Name Chris Holland | | Title Planning Manager | | Phone 360.363.8207 | | E-mail cholland@marysvillewa.gov | | | |

The City of Marysville Community Development Department is reviewing this application and encourages other affected agencies, departments, community groups and municipalities to respond. Your comments will assist the City's evaluation of this application. Furthermore, you will become a Party of Record to this case if you submit a response with your name and address. We highly recommend that you send your comments on letterhead. Without a full name and address, you will not be considered a Party of Record. You may e-mail, fax or send via regular mail your comments to this project manager listed above.

If you have no comments, please check the box below, sign and return this form to the project manager.

NO COMMENTS Signature: _____ Date: _____

ATTACHED Title: _____ Agency: _____

Chris Holland

From: John Cowling
Sent: Monday, October 13, 2014 2:12 PM
To: Chris Holland
Cc: Janis Lamoureux
Subject: RE: Lakewood Station - 25th Ave Street Vacation

Engineering has reviewed the construction estimates and have found them to be within reason.

Thanks.

John A. Cowling, P.E.**Assistant City Engineer**

City of Marysville | 80 Columbia Ave, Marysville, WA 98270
Direct Line (360) 363-8281 | Fax (360) 363-8284

From: Chris Holland
Sent: Thursday, October 09, 2014 9:42 AM
To: John Cowling
Cc: Janis Lamoureux
Subject: Lakewood Station - 25th Ave Street Vacation

John-

You will be receiving and RFR for the 25th Avenue Street Vacation for Lakewood Station. In the materials there are construction estimates and estimates of existing value of 25th Avenue. Can you please make sure that your staff reviews these numbers and provides responses to this? I would like to know if the applicant needs to adjust, prior to bringing to Council on November 3rd.

I've also attached all of the materials electronically, but you will be receiving paper copies.

Thank you,

Chris Holland | Planning Manager

CITY OF MARYSVILLE

Community Development Department
80 Columbia Avenue
Marysville, WA 98270

360-363-8100 Office
360-363-8207 Direct Line
360-651-5099 Fax

cholland@marysvillewa.gov
<http://marysvillewa.gov>



PUBLIC WORKS
Kevin Nielsen, *Director*

80 Columbia Avenue
Marysville, Washington 98270
Phone (360) 363-8100
Fax (360) 363-8284
ci.marysville.wa.us

MEMORANDUM

To: Chris Holland

Fr: Brenda Donaldson

Re: PA12-014

Date: October 22, 2014

Engineering Department Comments:

Utilities – No comments.

- Ryan Morrison

Transportation – No comments.

- Jesse Hannahs



REQUEST FOR REVIEW

Community Development Department ♦ 80 Columbia Avenue ♦ Marysville, WA 98270
 (360) 363-8100 ♦ (360) 651-5099 FAX ♦ Office Hours: Mon - Fri 7:30 AM - 4:00 PM

| PROJECT INFORMATION | | | | | | | | | |
|---|---|-------------------------------|--------|---|---|--|----------|---|-----|
| File Number | PA 12014 | | | Date Sent | | Please Return by | 10.20.14 | | |
| Project Title | Lakewood Station - 25 th Avenue NE and Pond Vacation | | | Related File Number(s) | | | | | |
| Project Description | Vacation of 25 th Avenue NE and the existing stormwater pond located on the northwest corner of 25 th Avenue NE and 172 nd Street NE. | | | | | | | | |
| BACKGROUND SUMMARY | | | | | | | | | |
| Owner/Applicant | Smokey Point Commercial, LLC | | | | | | | | |
| Site Address | 2403 & 2609 172 nd Street NE; 17526 25 th Avenue NE | | | APN(s) | 31052000302400, 31052000304600, 31052000303600, 31052000302600, 31052000302800, 31052000302900, 31052000302500, 31052000302700 | | | | |
| Acreage (SF) | N/A | | | Section | 20 | Township | 31N | Range | 05E |
| Comprehensive Plan | MU, GC | Zoning | MU, GC | Shoreline Environment | | | N/A | | |
| REVIEWING AGENCIES | | | | | | | | | |
| Marysville | Local Agencies & Districts | | | State & Federal | | County | | Other | |
| <input type="checkbox"/> Building <input checked="" type="checkbox"/> Fire District <input type="checkbox"/> LD (Anne Miller) <input type="checkbox"/> LD (Deryl Taylor) <input checked="" type="checkbox"/> LD (Shawn Smith) <input type="checkbox"/> Parks <input checked="" type="checkbox"/> Police <input checked="" type="checkbox"/> Public Works (John Cowling) <input checked="" type="checkbox"/> Public Works (Kari Chennault) <input type="checkbox"/> Public Works (Karen Latimer) <input type="checkbox"/> Public Works (Jesse Hannahs) <input type="checkbox"/> | <input type="checkbox"/> Arlington (city) <input type="checkbox"/> Arlington Airport <input type="checkbox"/> Community Transit <input type="checkbox"/> Everett (city) <input type="checkbox"/> Frontier <input type="checkbox"/> Lake Stevens (city) <input type="checkbox"/> Lake Stevens SD 4 <input type="checkbox"/> Lakewood SD 306 <input type="checkbox"/> Marysville SD 25 <input type="checkbox"/> PUD No. 1 (electric) <input type="checkbox"/> PUD No. 1 (water) <input type="checkbox"/> <input type="checkbox"/> | | | <input type="checkbox"/> US Army Corps of Engineers <input type="checkbox"/> BNSF <input type="checkbox"/> DOE (Bellevue) <input type="checkbox"/> DOE (Olympia - Env. Review) <input type="checkbox"/> DOE (SEPA - Greta Stough) <input type="checkbox"/> DOE (Shorelands - G. Tallent) <input type="checkbox"/> WDFW <input type="checkbox"/> WSDOT <input type="checkbox"/> WUTC <input type="checkbox"/> <input type="checkbox"/> | | <input type="checkbox"/> Health District <input type="checkbox"/> Planning <input type="checkbox"/> Public Works - Land Development <input type="checkbox"/> Public Works <input type="checkbox"/> <input type="checkbox"/> | | <input type="checkbox"/> Olympic Pipeline <input type="checkbox"/> Puget Sound Energy <input type="checkbox"/> Stillaguamish Tribe <input type="checkbox"/> Tulalip Tribes <input type="checkbox"/> <input type="checkbox"/> | |
| PROJECT MANAGER | | | | | | | | | |
| Name Chris Holland | | Title Planning Manager | | Phone 360.363.8207 | | E-mail cholland@marysvillewa.gov | | | |

The City of Marysville Community Development Department is reviewing this application and encourages other affected agencies, departments, community groups and municipalities to respond. Your comments will assist the City's evaluation of this application. Furthermore, you will become a Party of Record to this case if you submit a response with your name and address. We highly recommend that you send your comments on letterhead. Without a full name and address, you will not be considered a Party of Record. You may e-mail, fax or send via regular mail your comments to this project manager listed above.

If you have no comments, please check the box below, sign and return this form to the project manager.

NO COMMENTS **Signature:** **Date:** 12/23/14
 ATTACHED **Title:** _____ **Agency:** _____



REQUEST FOR REVIEW

Community Development Department ♦ 80 Columbia Avenue ♦ Marysville, WA 98270
 (360) 363-8100 ♦ (360) 651-5099 FAX ♦ Office Hours: Mon - Fri 7:30 AM - 4:00 PM

| PROJECT INFORMATION | | | | | |
|----------------------------|---|-------------------------------|----------|-------------------------|----------|
| File Number | PA 12014 | Date Sent | 10.09.14 | Please Return by | 10.20.14 |
| Project Title | Lakewood Station - 25 th Avenue NE and Pond Vacation | Related File Number(s) | | | |
| Project Description | Vacation of 25 th Avene NE and the existing stormwater pond located on the northwest corner of 25 th Avenue NE and 172 nd Street NE. | | | | |

| BACKGROUND SUMMARY | | | | | | | |
|---------------------------|--|----------------|---|------------------------------|-----|--------------|-----|
| Owner/Applicant | Smokey Point Commercial, LLC | | | | | | |
| Site Address | 2403 & 2609 172 nd Street NE; 17526 25 th Avenue NE | APN(s) | 31052000302400, 31052000304600, 31052000303600, 31052000302600, 31052000302800, 31052000302900, 31052000302500, 31052000302700 | | | | |
| Acreage (SF) | N/A | Section | 20 | Township | 31N | Range | 05E |
| Comprehensive Plan | MU, GC | Zoning | MU, GC | Shoreline Environment | N/A | | |

| REVIEWING AGENCIES | | | | |
|---|---|---|--|---|
| Marysville | Local Agencies & Districts | State & Federal | County | Other |
| <input type="checkbox"/> Building <input checked="" type="checkbox"/> Fire District <input type="checkbox"/> LD (Anne Miller) <input type="checkbox"/> LD (Deryl Taylor) <input checked="" type="checkbox"/> LD (Shawn Smith) <input type="checkbox"/> Parks <input checked="" type="checkbox"/> Police <input checked="" type="checkbox"/> Public Works (John Cowling) <input checked="" type="checkbox"/> Public Works (Kari Chennault) <input type="checkbox"/> Public Works (Karen Latimer) <input type="checkbox"/> Public Works (Jesse Hannahs) <input type="checkbox"/> | <input type="checkbox"/> Arlington (city) <input type="checkbox"/> Arlington Airport <input type="checkbox"/> Community Transit <input type="checkbox"/> Everett (city) <input type="checkbox"/> Frontier <input type="checkbox"/> Lake Stevens (city) <input type="checkbox"/> Lake Stevens SD 4 <input type="checkbox"/> Lakewood SD 306 <input type="checkbox"/> Marysville SD 25 <input type="checkbox"/> PUD No. 1 (electric) <input type="checkbox"/> PUD No. 1 (water) <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> US Army Corps of Engineers <input type="checkbox"/> BNSF <input type="checkbox"/> DOE (Bellevue) <input type="checkbox"/> DOE (Olympia - Env. Review) <input type="checkbox"/> DOE (SEPA - Greta Stough) <input type="checkbox"/> DOE (Shorelands - G, Tallent) <input type="checkbox"/> WDFW <input type="checkbox"/> WSDOT <input type="checkbox"/> WUTC <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> Health District <input type="checkbox"/> Planning <input type="checkbox"/> Public Works - Land Development <input type="checkbox"/> Public Works <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> Olympic Pipeline <input type="checkbox"/> Puget Sound Energy <input type="checkbox"/> Stillaguamish Tribe <input type="checkbox"/> Tulalip Tribes <input type="checkbox"/> <input type="checkbox"/> |

| PROJECT MANAGER | | | |
|---------------------------|-------------------------------|---------------------------|---|
| Name Chris Holland | Title Planning Manager | Phone 360.363.8207 | E-mail cholland@marysvillewa.gov |

The City of Marysville Community Development Department is reviewing this application and encourages other affected agencies, departments, community groups and municipalities to respond. Your comments will assist the City's evaluation of this application. Furthermore, you will become a Party of Record to this case if you submit a response with your name and address. We highly recommend that you send your comments on letterhead. Without a full name and address, you will not be considered a Party of Record. You may e-mail, fax or send via regular mail your comments to this project manager listed above.

If you have no comments, please check the box below, sign and return this form to the project manager.

NO COMMENTS Signature: M. A. [Signature] Date: 10/20/14
 ATTACHED Title: surface water Specialist Agency: WR - City of Marysville



MARYSVILLE POLICE DEPARTMENT



MEMORANDUM

DATE: October 23, 2014
TO: Chris Holland, Community Development Dept.
FROM: Larry Buell, Lieutenant *LJB*
RE: PA 12014

I have reviewed the application for the vacation of the Lakewood Station – 25th Ave NE and the existing storm water pond located on the northeast corner of 25th Ave NE and 172nd St NE

The Police Department has no issues at this time.

Feel free to contact me at 360.363.8328 if you have any questions.

1635 Grove Street, Marysville, Washington 98270
360-363-8300



REQUEST FOR REVIEW

Community Development Department ♦ 80 Columbia Avenue ♦ Marysville, WA 98270
 (360) 363-8100 ♦ (360) 651-5099 FAX ♦ Office Hours: Mon - Fri 7:30 AM - 4:00 PM

| PROJECT INFORMATION | | | | | | | | | |
|---|---|-------------------------------|--------|---|---|--|-------------------------|---|-----|
| File Number | PA 12014 | | | Date Sent | 10.09.14 | | Please Return by | 10.20.14 | |
| Project Title | Lakewood Station - 25 th Avenue NE and Pond Vacation | | | Related File Number(s) | | | | | |
| Project Description | Vacation of 25 th Avenue NE and the existing stormwater pond located on the northwest corner of 25 th Avenue NE and 172 nd Street NE. | | | | | | | | |
| BACKGROUND SUMMARY | | | | | | | | | |
| Owner/Applicant | Smokey Point Commercial, LLC | | | | | | | | |
| Site Address | 2403 & 2609 172 nd Street NE; 17526 25 th Avenue NE | | | APN(s) | 31052000302400, 31052000304600, 31052000303600, 31052000302600, 31052000302800, 31052000302900, 31052000302500, 31052000302700 | | | | |
| Acreage (SF) | N/A | | | Section | 20 | Township | 31N | Range | 05E |
| Comprehensive Plan | MU, GC | Zoning | MU, GC | Shoreline Environment | | | N/A | | |
| REVIEWING AGENCIES | | | | | | | | | |
| Marysville | Local Agencies & Districts | | | State & Federal | | County | | Other | |
| <input type="checkbox"/> Building <input checked="" type="checkbox"/> Fire District <input type="checkbox"/> LD (Anne Miller) <input type="checkbox"/> LD (Deryl Taylor) <input checked="" type="checkbox"/> LD (Shawn Smith) <input type="checkbox"/> Parks <input checked="" type="checkbox"/> Police <input checked="" type="checkbox"/> Public Works (John Cowling) <input checked="" type="checkbox"/> Public Works (Kari Chennault) <input type="checkbox"/> Public Works (Karen Latimer) <input type="checkbox"/> Public Works (Jesse Hannahs) <input type="checkbox"/> | <input type="checkbox"/> Arlington (city) <input type="checkbox"/> Arlington Airport <input type="checkbox"/> Community Transit <input type="checkbox"/> Everett (city) <input type="checkbox"/> Frontier <input type="checkbox"/> Lake Stevens (city) <input type="checkbox"/> Lake Stevens SD 4 <input type="checkbox"/> Lakewood SD 306 <input type="checkbox"/> Marysville SD 25 <input type="checkbox"/> PUD No. 1 (electric) <input type="checkbox"/> PUD No. 1 (water) <input type="checkbox"/> <input type="checkbox"/> | | | <input type="checkbox"/> US Army Corps of Engineers <input type="checkbox"/> BNSF <input type="checkbox"/> DOE (Bellevue) <input type="checkbox"/> DOE (Olympia - Env. Review) <input type="checkbox"/> DOE (SEPA - Greta Stough) <input type="checkbox"/> DOE (Shorelands - G, Tallent) <input type="checkbox"/> WDFW <input type="checkbox"/> WSDOT <input type="checkbox"/> WUTC <input type="checkbox"/> <input type="checkbox"/> | | <input type="checkbox"/> Health District <input type="checkbox"/> Planning <input type="checkbox"/> Public Works - Land Development <input type="checkbox"/> Public Works <input type="checkbox"/> <input type="checkbox"/> | | <input type="checkbox"/> Olympic Pipeline <input type="checkbox"/> Puget Sound Energy <input type="checkbox"/> Stillaguamish Tribe <input type="checkbox"/> Tulalip Tribes <input type="checkbox"/> <input type="checkbox"/> | |
| PROJECT MANAGER | | | | | | | | | |
| Name Chris Holland | | Title Planning Manager | | Phone 360.363.8207 | | E-mail cholland@marysvillewa.gov | | | |

The City of Marysville Community Development Department is reviewing this application and encourages other affected agencies, departments, community groups and municipalities to respond. Your comments will assist the City's evaluation of this application. Furthermore, you will become a Party of Record to this case if you submit a response with your name and address. We highly recommend that you send your comments on letterhead. Without a full name and address, you will not be considered a Party of Record. You may e-mail, fax or send via regular mail your comments to this project manager listed above.

If you have no comments, please check the box below, sign and return this form to the project manager.

NO COMMENTS Signature: D. Van B... Date: 10-21-14
 ATTACHED Title: Asst. F.M. Agency: MFD

CITY OF MARYSVILLE
Marysville, Washington
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MARYSVILLE VACATING A PORTION OF 25th AVENUE NE AND AN EXISTING STORMWATER DETENTION POND LOCATED NORTH OF 172nd STREET NE (SR 531) IN THE CITY OF MARYSVILLE, WASHINGTON.

WHEREAS, a public hearing was held before Marysville City Council on February 9, 2015 to consider vacation of a portion of 25th Avenue NE, and a stormwater detention pond, located north of 172nd Street NE (SR 531) in the City of Marysville, and to consider waiving compensation for said vacation; and

WHEREAS, the Marysville City Council recommends waiving all compensation of the vacated right-of-way, based on the following factors:

(a) At the public hearing for the Lakewood Station Binding Site Plan, Washington State Department of Transportation (WSDOT) testified that a signal or a roundabout (RAB) would not be allowed to be installed at the intersection of 172nd Street NE (SR 531) and 25th Avenue NE, due to its close proximity to the signalized intersection of 27th Avenue NE to the east. WSDOT however, does support construction of a RAB further west at approximately the 2300 Block.

(b) The relocation of 25th Avenue NE, west to a RAB located at 23rd Avenue NE, will provide a public benefit by allowing existing residents, future residents and patrons of the proposed commercial development improved access to 172nd Street NE (SR 531). Currently, 25th Avenue NE is a non-signalized intersection which makes it difficult to make left turns during the AM and PM peak hours.

(c) Vacating 25th Avenue NE and the stormwater detention pond provides an opportunity for commercial development that would otherwise be difficult due to access restrictions required by WSDOT

(d) The applicant is proposing to construct and dedicate a new roadway alignment, to a public standard; including sidewalks, planter strips and decorative lighting, at no cost to the public. The cost for constructing the road, not including the RAB at 172nd Street NE (SR 531), decorative lighting and landscaping is approximately \$776,692.00.

(e) The dedication of new public right-of-way is approximately 86,733 SF, not including dedication of right-of-way for the construction of the RAB and frontage improvements on 172nd Street NE (SR 531). The applicant has requested 87,342 SF of existing right-of-way be vacated.

WHEREAS, the Marysville City Council considered the evidence presented at the public hearing and entered the following findings of fact:

(a) The vacation will provide a public benefit and purpose as the applicant shall be required to construct and dedicate, to the City of Marysville, a new public roadway realigning 25th Avenue NE to the west to a mini roundabout (RAB) and construct a RAB at 172nd Street NE (SR 531), to a public standard; including sidewalks, planter strips and decorative lighting, as approved by the City Engineer and Washington State Department of Transportation;

- (b) The right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole;
- (c) The public need shall not be adversely affected;
- (d) The right-of-way is not contemplated or needed for future public use;
- (e) No abutting owner will become landlocked nor will his access be substantially impaired;

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

Section 1. That portion of 25th Avenue NE and the stormwater detention pond as legally described and depicted in **Exhibit A** attached hereto, is hereby vacated, subject to the following conditions:

- (a) Vacation of 25th Avenue NE and the stormwater detention pond shall not be effective until the applicant has constructed a permanent or temporary public access from 25th Avenue NE to 172nd Street NE (SR 531), as approved by the City Engineer;
- (b) 25th Avenue NE shall be vacated subject to reservation of a perpetual easement in favor of the City of Marysville for utilities, across, under and through that portion of the property; and
- (c) The applicant shall be required to construct and dedicate, to the City of Marysville, a new public roadway realigning 25th Avenue NE to the west to a mini RAB and construct a RAB at 172nd Street NE (SR 531), to a public standard; including sidewalks, planter strips and decorative lighting, as approved by the City Engineer and Washington State Department of Transportation.

Section 2. This ordinance and the vacation of that portion of 25th Avenue NE and the stormwater detention pond as legally described and depicted in **Exhibit A** attached hereto, shall become effective five (5) days after publication of this ordinance and recording by the City of a certified copy of the same in the records of the Snohomish County Auditor. This ordinance shall not be recorded until and unless condition (a) in Section 1 of this Ordinance has been fully satisfied and the right-of-way for the new public roadway realigning 25th Avenue NE has been dedicated to the City of Marysville.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or work of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2015.

CITY OF MARYSVILLE

By: _____
JON NEHRING, MAYOR

Attest:

By: _____
APRIL O'BRIEN, DEPUTY CITY CLERK

Approved as to form:

By: _____
JON WALKER, CITY ATTORNEY

Date of Publication: _____

Effective Date: _____
(5 days after publication)

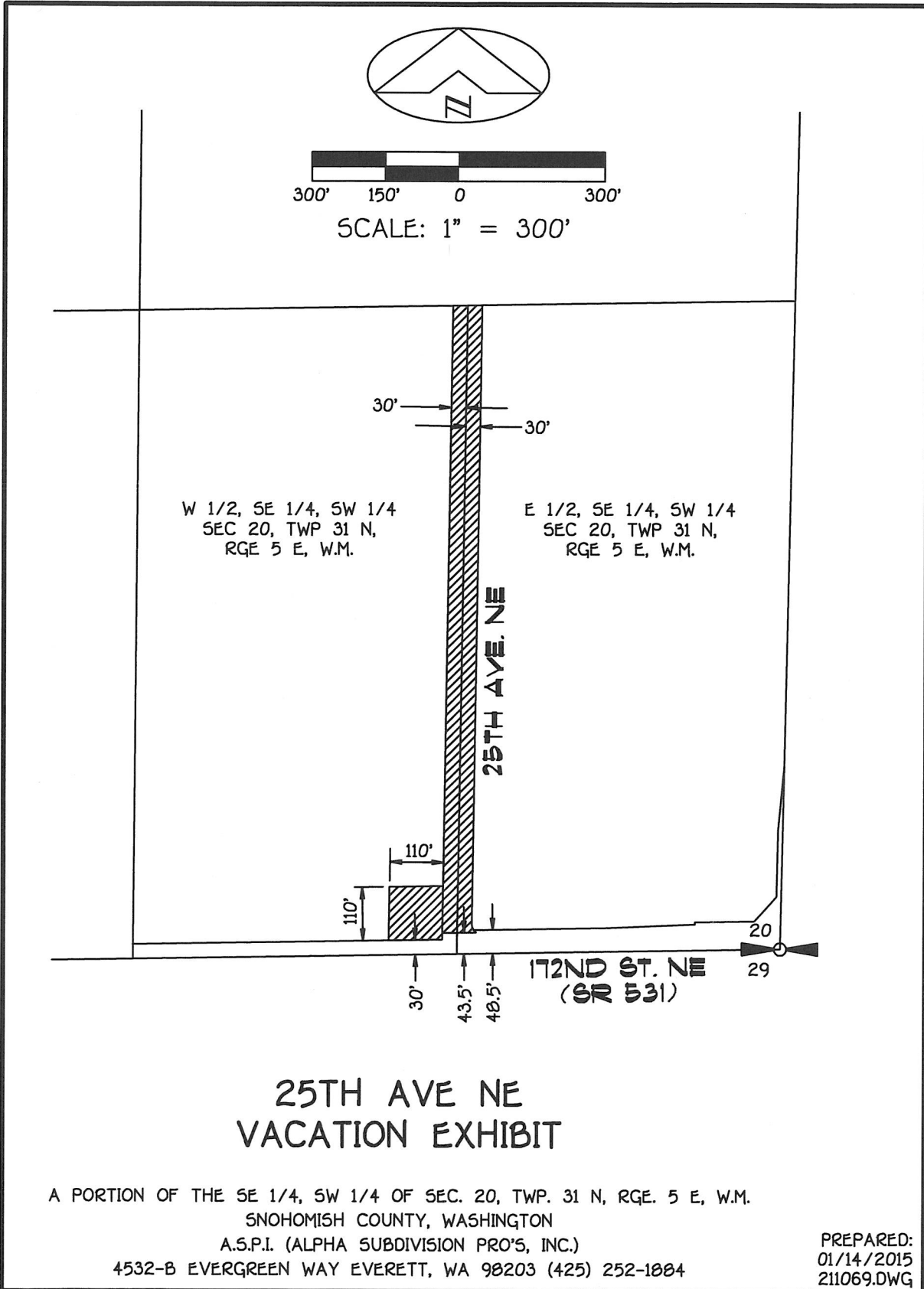


EXHIBIT A

25TH AVENUE NE VACATION LEGAL DESCRIPTION

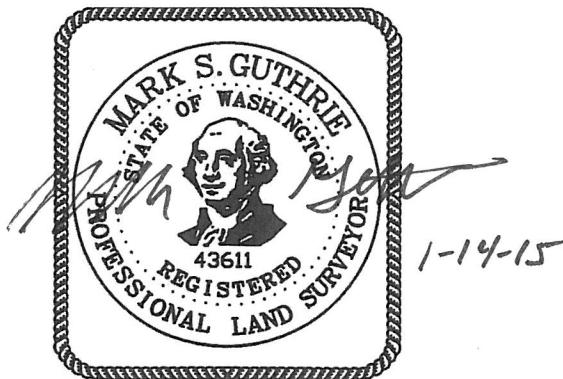
THE EAST 30.00 FEET OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M.;
EXCEPT THE SOUTH 43.50 FEET THEREOF.

TOGETHER WITH THE WEST 30.00 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M.;
EXCEPT THE SOUTH 43.50 FEET THEREOF.

TOGETHER WITH THE FOLLOWING DESCRIBED TRACT OF LAND:
COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER;
THENCE SOUTH 89°03'37" WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER 661.16 FEET TO THE CENTERLINE OF 25TH AVENUE NE;
THENCE NORTH 00°47'48" EAST ALONG SAID CENTERLINE 43.52 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND 43.50 FEET NORTH OF SAID SOUTH LINE;
THENCE NORTH 89°03'37" EAST ALONG SAID PARALLEL LINE 30.01 FEET TO A POINT ON A LINE WHICH IS PARALLEL WITH AND 30.00 FEET EAST OF SAID CENTERLINE, SAID POINT BEING THE TRUE POINT OF BEGINNING;
THENCE CONTINUE NORTH 89°03'37" EAST 9.21 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 20.00 FEET AND TO WHICH POINT A RADIAL LINE BEARS SOUTH 33°28'18" WEST;
THENCE NORTHWESTERLY 20.01 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 57°19'29" TO A POINT ON SAID PARALLEL LINE;
THENCE SOUTH 00°47'48" WEST ALONG SAID PARALLEL LINE 17.11 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE NORTH 110 FEET OF THE SOUTH 140 FEET OF THE WEST 110 FEET OF THE EAST 140 FEET OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 31 NORTH, RANGE 5 EAST, W.M., AS CONVEYED TO SNOHOMISH COUNTY BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NUMBER 9304070110, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.



Update
Index #9

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: February 9, 2015

| | |
|---|---------------------------|
| AGENDA ITEM: Consider Golf Course Management Agreement with Premier Golf Centers LLC for Cedarcrest Golf Course | |
| PREPARED BY: Jim Ballew | DIRECTOR APPROVAL: |
| DEPARTMENT: Parks and Recreation | |
| ATTACHMENTS: Golf Course Management Agreement | |
| BUDGET CODE: | AMOUNT: |
| SUMMARY: | |

At the recommendation of the City Council, staff has negotiated a Golf Course Management Agreement with Premier Golf Centers LLC of Seattle Washington to assume management of golf operations effective March 1, 2015 for an initial period of five years. Premier Golf Centers LLC responded to the city’s RFP that was developed to seek qualified firms capable in assisting the City with golf course operations at Cedarcrest Golf Course. Premier Golf Centers LLC currently manages eleven (11) golf courses in the State of Washington and has a proven track record of success as a specialist in municipal golf course operations. Representatives of Premier Golf Centers LLC made a presentation to the golf committee and City Council defining their abilities on February 2, 2015. At the conclusion of the presentation at the City Council Work Session staff was directed to negotiate an Agreement to assume operations of the golf course.

The proposed Golf Course Management Agreement recognizes the retention of Premier Golf Centers LLC as an Operator to assume management and operations of Cedarcrest Golf Course and all related facilities and service including but not limited to Golf Course Pro Shop, Cart Fleet Rentals, Golf Course Maintenance, On-Course Buildings and Facilities excluding the restaurant building and operations.

A Base Management Fee of \$8,000 per month will be paid by the City to the Operator for the duration of the Agreement with an Annual Growth Incentive Fee provided based on the financial performance of the course under the Management Agreement schedule. The Term of the Agreement shall be for five (5) years with two (2) five year renewals at the City’s option. Either party to the Agreement shall have the right to terminate by delivery of written notice of 90 days prior to the effective date.

| |
|--|
| RECOMMENDED ACTION: Staff recommends the City Council consider authorizing the Mayor to sign the Marysville Golf Course Management Agreement with Premier Golf Centers LLS of Seattle, Washington to assume management operations of Cedarcrest Golf Course effective March1, 2015 in the amount of \$8,000 per month including an Annual Growth Incentive Fee as recognized within the Agreement. |
|--|

THE CITY OF MARYSVILLE CEDARCREST GOLF COURSE MANAGEMENT AGREEMENT

This Golf Course Management Agreement ("Agreement") is entered into by and between the City of Marysville ("City"), a municipal corporation of the State of Washington, with principal address at 1049 State Avenue, Marysville, WA 98270 and Premier Golf Centers, LLC, and its subsidiary, PGC Interbay, LLC ("Operator") with principal address at 2466 Westlake Avenue North #8, Seattle, WA 98109.

RECITALS:

WHEREAS, the City owns the Cedarcrest Golf Course and related facilities ("Golf Course"); and

WHEREAS, the City desires to enter into an agreement with an experienced public and/or municipal Golf Course Operator to provide for the overall management and operation of golf services and the collection of fees therefrom to ensure the highest quality of golf programs and related benefits for the public while operating within the budget approved by the City; and

WHEREAS, the City issued a Request for Proposal in order to select a Golf Course Operator and Operator submitted the successful proposal; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

- 1.1 "Adjusted Gross Revenue" means Gross Revenue earned from the operation of the City's Golf Course reduced only by a) Washington State sales taxes and other tax imposed by any government agency on sales, b) admissions taxes collected, and c) revenue collected from the sale or surplus of equipment associated with golf course maintenance.
- 1.2 "Annual Budget" means the annual budget for the Golf Course. The proposed Annual Budget shall be delivered by the Operator to the City by June 1st of each year.
- 1.3 "Approved Annual Budget" means the Golf Course budget that is approved by the City.
- 1.4 "Capital Expenditure" means any expenditure for new or replacement capital equipment or improvements to the Golf Course that have an anticipated useful life equal to or greater than one (1) year and a cost of 5000 (Five Thousand Dollars) or greater
- 1.5 "City" means the City of Marysville, a municipal corporation, and its elected officials and any department or subdivision thereof.
- 1.6 "Dark" means ½ hour after sunset until ½ hour before sunrise.
- 1.7 "Department" means the City of Marysville's Department of Parks and Recreation.
- 1.8 "Direct Cost" means any cost which is directly related to the normal and ordinary staffing, operations, or routine maintenance of the Golf Course as approved by the City in the Annual Budget as further defined in Section 7.1.
- 1.9 "Director" means the Director of the Parks and Recreation responsible for the management of the Golf Course Management Agreement and the overall operations of the City Golf Course.
- 1.10 "Cost of Goods Sold": "Cost of goods Sold" shall mean annual cost of Pro Shop merchandise sold, plus actual cost of food and beverage sold, plus the commissions paid on Lessons given.
- 1.11 "Effective Date" means the date listed in Section 4.1 of the Agreement.

- 1.12 "Executive" means any person who has a financial interest in Premier Golf Centers, LLC or any officer of the company with the title of Chief Executive, Chief Financial, or Director.
- 1.13 "Fees and Charges" means the fees and charges for use of the Golf Courses (greens fees and cart rental fees) as approved by the City for the applicable Operating Year.
- 1.14. This section left intentionally blank.
- 1.15 This section intentionally left blank.
- 1.16 "Golf Course" means all of the buildings, grounds, fixtures, structures, restrooms, equipment, computers, tools, vehicles, fencing, utilities and all appurtenances thereto.
- 1.17 "Golf Lessons" means the professional golf instruction given at the Golf Courses by either the Class "A" PGA Golf Professional or qualified golf instructors as approved by the City, the Department and employed or subcontracted by the Operator.
- 1.18 "Gross Revenue" means any and all income received from the operation of the City's Golf Course and business conducted from or at the Golf Course, including but not limited to the proceeds from all retail and wholesale sales and fees. The term "Gross Revenue" does not mean or include the amount of money refunded to, and not merely credited to the account of, customers who return or do not accept merchandise sold by Operator; any exchange of merchandise between locations or the central warehouses where such exchange is made solely for the convenient operation of Operator's business; returns to shippers or manufacturers; any discount allowed by Operator to customers; or business conducted by Operator from the Operator Offices or Premises on behalf of non-City entities.
- 1.19 "Operating Year" means:
- A. The first Operating Year shall commence on the Effective Date and end on December 31, 2015 at 11:59 p.m.
 - B. Each Operating Year thereafter shall comprise the period of twelve (12) full calendar months.
- 1.20 "Operator" means Premier Golf Centers, LLC and its subsidiary, PGC Interbay, LLC (the professional golf course operating company selected to operate the City's Golf Course.)
- 1.21 "Operator Offices" means space located at the Cedarcrest Golf Course.
- 1.22 "Prepays" means money received on account as a credit available towards customers or groups. Gift cards are accessed by a physical card and good for any item. Credit books are designated by number and are generally for golf merchandise only unless they are temporary accounts set up for prepaid deposits on banquets or tournaments.
- 1.23 "Pro Shop" means the golf and merchandise facilities located at the Golf Course.
- 1.24 "Restaurants" means the food and beverage dining facilities located at the Golf Course. Vending machines, remote food carts, and other food-related activities on the Golf Course are included in the definition of "Restaurants."
- 1.25 "Property" means the real property upon which the Golf Course is located. The Property is described in Exhibit A hereto.

- 1.26 "Standard Operating Procedure Manual" means the Operating Procedures Manual as recognized in Exhibit "D" which will be updated and supported by Operator through the length of the Agreement.
2. RETENTION OF OPERATOR.
The City hereby retains the Operator for the management and operation of the Golf Course and all related facilities and services, including, but not limited to, the Golf Course, Pro Shop, Golf Cart Rentals, on course restrooms and all other Buildings located at the Golf Course, excluding the Golf Restaurant building. The City's Request for Proposal/Request for Information dated November, 2014 and the Operator's response to this Request for Proposal/Request for Information dated December 18, 2014 are incorporated into this Agreement by reference.
- 2.1 INDEPENDENT CONTRACTOR STATUS
The services and deliverables shall be furnished by the Operator as an independent Operator, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the City with respect to payments to Operator. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of Operator's status as an independent Operator hereunder, no workers' compensation insurance has been or will be obtained by the City on account of Operator. Operator may be required to provide the City proof of payment of these said taxes and benefits. If the City is assessed or deemed liable in any manner for those charges or taxes, the Operator agrees to hold the City harmless from those costs, including attorney's fees.
3. ACCEPTANCE.
Prior to the Effective Date of this Agreement, the Operator has made an inspection of the Golf Course and related fixtures and facilities and hereby accepts their condition for purposes of this Agreement on an "as is" basis.
4. TERM.
4.1 Term of Agreement. The initial term of this Agreement shall be for five (5) years, with two (2) five (5) year renewals at the City's option, beginning on the Effective Date of March 1, 2015.
4.2 Upon termination of the Agreement, all employees and agents of the Operator shall vacate the premises of the Golf Course and shall have no further rights or duties thereon, except to ensure and organize a proper transfer of the premises, equipment and property, records and all inventories and pre-pays (credit books and gift cards) of the Golf Course back to the City.
4.3 Termination for Convenience. Either party to this Agreement shall have the right to terminate this Agreement by delivering to the other party written notice of its intention to terminate at least ninety (90) days prior to the effective date of the termination.
5. OPERATOR'S BASIC SERVICE OBLIGATIONS.
5.1 Golf Management Services. The Operator shall sell, rent, lease, store and repair golf equipment, sell golf-related clothing and supplies, provide instructional services in the playing of golf, and operate the Golf Course, Pro Shop, Golf Cart rentals as set forth in this Agreement. The Operator shall employ a Class "A" PGA Professional in a supervisory capacity and may employ supervisors, golf professionals and other personnel at the Golf Course, subject to the approval of the City.

A. Merchandise. The Operator is authorized to make purchases in order to provide and maintain in the Pro Shop such inventory of golf merchandise as deemed necessary within the City's Approved Annual Budget to adequately meet the expectations of the public. After written notice to and consultation with the Operator, the City shall have the right to prohibit the sale and rental of any item of merchandise if the City, in its sole

discretion, determines that the item(s) is of such inferior quality as to not be in the public interest to be offered for sale or that such item(s) is not necessary or desirable for proper service to the public. Unless otherwise approved by the Director or designee, the Operator will maintain minimum/maximum inventory levels for sale in the Pro Shop as determined by the City.

- B. The City reserves the right to require that the Operator shall keep a system of accounts for prepaid books (credit books) of tournament winnings awarded at the course for tournament play. The course manager shall control the credit book accounts such that he or she can only increase or decrease winners' book accounts. The system will only allow a total increase to winners' book accounts by no more than the total available in the tournaments' credit book account. The Operator shall be able to run reports for all tournaments at the course and to check all credit book balance sheets. Credit book holders shall be able to spend funds at the City golf course.
 - C. Golf Lessons. The Operator shall provide for Golf Lessons by employing qualified instructors accredited by the PGA and the PGA apprentice program. The Operator shall cause all golf instructors, including Class "A" PGA Golf Professionals, to comply with the rules and regulations of the Golf Course Standard Operating Procedures
 - D. Golf Programs. Operator shall implement and promote golf programs as provided in the Golf Course Standard Operating Procedures by providing group lessons and general golf instruction, and by conducting tournaments for men's and women's clubs, junior and senior groups, leagues and outings.
 - E. Minimum Hours of Operation. At a minimum, the facilities shall initially be open and available to the public as listed on Exhibit B attached herein. Thereafter the days of operation and daily hours of operation shall be as recommended by the Operator and as approved by the Director.
 - F. Golf Course Maintenance. Within sixty (60) days of the execution of this agreement, Operator will commence year round maintenance services which shall include, but not be limited to, maintenance staff management, turf management, natural areas, landscaping, tree maintenance, irrigation system, environmental compliance, record keeping and reporting and other miscellaneous maintenance within the golf course property. Maintenance of the golf course will be in accordance with the city standards set forth in Exhibit C of this Agreement. The City may delay the commencement of the Operator's assumption of maintenance responsibilities by giving the Operator written notice that the City will continue providing maintenance services for the Golf Course. Such notice shall be given to the Operator within forty-five (45) days of the execution of this Agreement. If the City elects to delay commencement of the Operator's assumption of maintenance responsibilities, the City shall provide written notice to the Operator for the duration of the delay. The duration of the delay shall be no more than sixty (60) days unless otherwise agreed by the parties. The City shall be responsible for all Golf Course maintenance until the end of the stated delay.
- 5.2 Building and Equipment Maintenance Services. Throughout the term of this Agreement, the Operator shall keep and maintain in good, operable, usable and sanitary order and repair the interiors and hard surface exteriors contiguous to the parking lots of the Golf Course, including, but not limited to, the Pro Shops, on course restrooms, storage spaces, and golf cart rentals, and all buildings, structures, improvements, fixtures, equipment and utility systems, which may now or hereafter exist on or in the Golf Course. The Operator shall provide for such ordinary repairs, replacements, rebuilding and restoration as may be required in compliance with this Agreement. All such replacements, rebuilding and

restoration, but not repair, shall be approved in writing by the City prior to implementation. Maintenance that would exceed the Annual Approved Budgeted amount shall be approved in writing by the City prior to implementation.

- 5.3 Improvements. Any improvements, additions, alterations or changes (collectively, "Improvements") to the Golf Course facility, shall be subject to written approval by the City, prior to the commencement of the improvements work. Securing of applicable permits and compliance with such terms and conditions as may be imposed by the City and may be reimbursable under this Agreement.
- 5.4 City Ownership. Except for leased equipment and proprietary property of the Operator, the ownership of all Golf Course structures, buildings, equipment or improvements thereto or thereon, merchandise, golf hand carts and Golf Course maintenance equipment constructed or acquired by the City, or by Operator on behalf of the City, and all alterations, additions or betterments thereto, shall remain with and be owned by the City.
- 5.5 Inventories. The Operator and the City shall jointly inventory City-owned equipment following a mutually agreeable schedule, but no less than every two years.
- 5.6 Inspections. The City may conduct both scheduled and unscheduled inspections of the Golf Course without interrupting the normal operations. The City shall retain a written report of such inspections for reference and a copy of the report shall be forwarded to the Operator. The Operator shall review the report and prepare a written response to the noted exceptions and findings within fifteen (15) days of the receipt of the report, including contemplated courses of action to correct the noted exceptions and findings. After consulting with the Director or designee, the Operator shall take corrective action suggested by the Director or designee.

6. OPERATING RESPONSIBILITIES.

- 6.1 Budget. The Operator shall submit to the City, for its review and approval, the Annual Budget for each Operating Year after the first Operating Year of this Agreement. The Budget for the first Operating Year will be provided by the City. Beginning in 2016, the Operator will submit a proposed Budget no later than a date to be determined each year under the Agreement for the upcoming calendar year (by way of example, the proposed Budget for Operating Year/calendar year 2016 by June 1 of 2015). The City shall approve, disapprove and adjust the proposed Budget a date to be determined each year as part of its budget process. Each proposed Budget shall be in a format acceptable to the City and shall include, but not be limited to, proposed Fees and Charges, the projected number of Operator employees, the projected number of rounds of golf played, and all projected revenues for the Golf Course and the proposed Direct Costs and expenses, identifying those that are paid by the Operator and reimbursed by the City. After consultation with Operator, the Director or designee shall have the authority to negotiate changes to the proposed Budget including, but not limited to, the projected revenue, projected costs and the method of cost allocation and marketing.
- 6.2 Annual Reports. Beginning on a date to be determined, and on or about February 2016th of each Operating Year during the Term, the Operator shall submit to the Director or designee, for his or her review and approval, an annual report ("Report"). Each Report shall include a description of the physical condition of the Golf Course and list any repairs or improvements made during the most recently concluded Operating Year. Each Report also shall include a detailed revenue, cost and expense report in a form acceptable to the City. Reports will be submitted by the Operator in written form and as electronic media using mutually agreeable software. If the Director or designee does not approve the Report, the Operator shall take all corrective action and submit a revised report to the Director or designee for review and approval. The Operator will include an Annual Report presentation to the City Council.

6.2a. A report of all inventories as of December 31st of each year shall be submitted to the Director or designee by January 15th of each year.

- 6.3 Monthly Reports. The Operator shall submit to the City, for its review and approval, on or before the twentieth (20th) day of the month following each month of operations under this Agreement, a detailed and complete Monthly Operating Report. Each Monthly Report shall include a summary regarding the physical condition of the Golf Course and any repairs or improvements made during the most recently concluded month, as well as a monthly inventory. Each Monthly Report also shall include a summary of the financial condition of the Golf Course including the revenue by category and course, the detailed categorized costs and other financial data as may be required by the City. The Operator shall provide additional information and documentation relating to any expense or income entry as the City may require. Monthly Reports will be submitted by the Operator in written form and as electronic media using mutually agreeable software.

6.3a. Other Reports. A Loss Report shall be submitted to the Finance Director or designee within forty-eight (48) hours for any loss of any asset or inventory, including cash, valued at \$100 or more which, as required by State law, will be reported to the State Auditor.

- 6.4 Compliance with Laws. The Operator shall comply with all municipal ordinances, all state and federal laws, and all regulations applicable to the operation of the Golf Course and the management services provided under this Agreement. The Operator will comply with all applicable laws and regulations applicable to management or service contracts that involve facilities financed with tax-exempt bonds under federal tax law.

6.4a. The Operator shall not knowingly permit any illegal activities to be conducted on or at the premises of the Golf Course. The Operator shall obtain all such required permits or licenses from the appropriate regulatory agency before undertaking any regulated activity.

- 6.5 This section intentionally left blank.

- 6.6 Compliance with Rules and Regulations. The Operator shall comply with all rules and regulations set forth in the Golf Course Standard Operating Procedures Manual and will enforce all such rules at the Golf Course.

- 6.7 Operator's Obligations to Refrain from Discrimination (Equality of Treatment).

The Operator agrees to take all steps necessary to comply with all federal, state and City laws and policies regarding nondiscrimination and equal employment opportunities. The Operator shall not discriminate because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age marital status, familial status, or the presence of any sensory, mental or physical handicap. In the event of non-compliance by the Operator with any of the non-discrimination provisions of this Contract, the City shall be deemed to have cause to terminate this Contract, in whole or in part.

- 6.8 Signs. The Operator shall not post any signs at the Golf Course property including fence lines, without the prior approval of the City.

- 6.9 Marketing and Advertising. The Operator shall use its best efforts to maximize the public use of the Golf Course by effectively marketing and promoting the Golf Course to ensure financial and operating success. For each operating year, the Operator shall submit to the City as a part of the proposed Budget a complete marketing and advertising plan and shall include a year-end marketing and advertising report along with the Annual Report concerning all activities undertaken by the Operator with respect to the approved marketing and promotion plan for the applicable Operating Year. The City reserves all advertising rights associated with the Golf Course and Operator will purchase any advertising on behalf of the City.

- 6.10 Utilities. Upon commencement of the term of this Agreement, the City shall be responsible for arranging for the utility services required by the Golf Course, including, but not limited to, water, gas, electricity, sewer service and trash removal. The Operator will be responsible for all telephone, internet, cable and building security utilities. The Operator acknowledges that during the term of this Agreement there may be a defect, deficiency or impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system or electrical apparatus or wires serving the Golf Course. Any expenses incurred by the Operator to correct any such defect, deficiency or impairment shall be a Direct Cost, aside from capital expenditures. The City will be responsible for any and all utility payments and or deposits required for utility services and such payments and or deposits will not be reimbursed as a Direct Cost.
- 6.11 Safety. The Operator shall immediately correct any unsafe conditions to the premises of the Golf Course, and/or notify the City of any potentially unsafe conditions, as well as any potentially unsafe practices occurring thereon. The Operator shall contact an emergency medical response provider as soon as reasonably possible after becoming aware of any person on or at any of the Golf Course who is in need of medical attention because of illness or injury. The Operator is required to contact the City immediately for any injuries sustained on the course and shall cooperate fully with the City in the investigation of any accidental injury or death occurring at the Golf Course and shall submit promptly to the Director or designee an accident report describing any injuries or deaths at the Golf Course. An incident log will be maintained at the Golf Course by the Operator.
- 6.12 Use of Facilities Restrictions. The Operator shall obtain from the Director or designee prior written approval of any events or activities not otherwise specifically provided for or authorized under the Agreement, or any extraordinary events or activities requiring the exclusive use of any of the Golf Courses or any portion thereof. The City retains exclusive use of the storage room enclosed within the top floor of the course Maintenance Building for storage and access of holiday decorations utilized within the city. City will contact Operator for any and all access needs with 24 hour notice. All content(s) will belong to the city and be maintained and insured by city.
- 6.13 Meetings. Representatives of the Operator and the City shall, at a minimum, meet monthly and at such other times as may be required by the City to review the Operator's performance under this Agreement, to review the monthly financial reports submitted by Operator, and discuss any problems or emerging issues.
- 6.14 Fees. Initially all Fees and Charges shall be the Current Fees and Charges schedule that have been approved by the City. Beginning with the Operator's submission of the proposed 2016 Budget on a date to be determined, the Operator shall propose Fees and Charges for the coming year to the Parks and Recreation Advisory Board for final recommendation to the City Council. The Operator, in the exercise of its professional judgment, shall recommend Fees and Charges at such rates that will best meet the goals of maximizing Golf Course net revenue and the positive golfing experience of golfers of all ages and skills. The City will review, revise as needed, and establish Fees and Charges for the upcoming operating year.

The Operator shall also propose for approval by the City: a) off-season fees for rounds of golf, cart fees, for all other golf services at the Golf Courses and/or temporarily lower fees, discounts, or promotional programs not identified within the Standard Operating Procedures Manual located within Exhibit D

These fees include all charges directly related to Golf Course operations including course fees, fees for classes and lessons, equipment fees and other usual Golf Course fees and charges paid by golfers. Retail pricing within the Pro Shop, equipment and supplies, are not included in Fees and Charges and shall be proposed by the Operator in its proposed Budget, or at other times, and shall be approved by the City without legislative approval.

If the Operator proposes an increase in the maximum fees authorized under this Agreement other than in the proposed Budget submission, the Operator shall submit such proposed changes to the City for approval at least ninety (90) days prior to the proposed implementation date.

The parties recognize that any increase in the maximum fees authorized under this Agreement can be approved by the Director or designee up to, but not exceeding the maximum fee approved in the City of Parks and Recreation Fees and Charges Schedule which is adopted by City Council by Ordinance. Any increase in fees to exceed the existing Fees and Charges Schedule shall be in the Operator's proposed Budget and shall be approved in advance by the City Council.

Except as specifically authorized in writing and by mutual agreement, employees of the Operator shall not receive discounts to the above listed fees.

6.14.1 Restaurant, and other Goods and Services. The Operator shall work with the restaurant lessee to coordinate the activities of the restaurant and the golf course.

6.15 Business License, and permits.

6.15.1 Business License and Permits. Operator shall obtain all necessary state and local licenses and permits necessary to conduct business at the Golf Course.

6.15.2 Reimbursed Direct Costs And Expenses. The City will reimburse Operator, as a Direct Cost, Snohomish County Department of Public Health permits and inspections, Washington State Department of Transportation Highway Signage Fees and other permits and fees directly related to the operation of the Golf Course and approved by the City in the Approved Budget. Any Operator legal and administrative costs associated with obtaining these licenses and permits must be approved in advance by the City. Any late charges or penalties incurred by the Operator that are associated with obtaining these licenses and permits will not be reimbursed by the City.

7. COSTS AND EXPENDITURES.

7.1 Direct Costs. All Direct Costs (the normal and ordinary costs of operating and maintaining the Golf Courses) shall be paid by the Operator from the Operator's bank account, and Operator shall be reimbursed by the City. The City will reimburse Direct Costs without mark-up or profit to the Operator, and such costs will include only the amount paid to unrelated persons as listed in the Operator's proposal response dated December 18, 2014. The amounts paid by the Operator for salaries, wages, compensation and benefits to its employees that are to be reimbursed by the City are required to be determined at fair market value and not be based upon any share of net profits from the operation of the Golf Courses. In addition, amounts paid by the Operator as compensation to its "executive" *personnel, including those "executives" located on site or offsite, are not to be reimbursed as Direct Costs but instead are to be included as part of the Management Fee provided in Section 8 below.* Subject to the above limitations, a Direct Cost shall be any cost which is directly related to the normal and ordinary staffing, operations or maintenance of the Golf Courses only when approved by the City in the Approved Budget or when proposed by the Operator and approved in writing by the City, including but not limited to the following:

- A. Operator employee salaries, wages and compensation.
 - B. Operator's employee benefits including vacation, sick leave, health insurance, disability insurance and worker's compensation insurance.
 - C. Employee Incentives and Bonuses. Employee incentives that comply with City policies are authorized and will be considered a Direct Cost. These incentives are to express employee appreciation, and are generally of minimal value (less than twenty-five dollars); the reimbursement request for any incentives that comply with City policies must be submitted on the appropriate form(s). Any other employee incentive or bonus will be excluded as a Direct Cost and will be paid at Operator's sole expense.
 - D. Food for Operator Employees. Food provided to employees that complies with City policies is authorized and will be considered a Direct Cost. Generally food is only authorized as a Direct Cost if it is provided for employee training sessions that last 4 (four) hours or more and is in a location where it is impractical for employees to make individual arrangements for food. All other food provided to employees will be excluded as a Direct Cost and will be at the Operator's or employees sole expense.
 - E. Personal Mileage Reimbursement. Reimbursement of Operator employee usage of personal cars for business purposes shall be considered a Direct Cost, up to the then current rate approved by the IRS. Operator employees requesting mileage reimbursement shall maintain and submit mileage/trip logs as may be required by the City. Mileage will be reimbursed at the current rate authorized by the IRS. The employee must submit with the reimbursement request a log of beginning and ending mileage and beginning and ending location and the business reason for the travel. City is not required to pay costs of an Operator employee commuting between home and work.
 - F. Lease and/or rental of equipment.
 - G. Repair and maintenance of golf and hand carts, irrigation systems and capital equipment.
 - H. Uniforms, laundry and linens.
 - I. Operating supplies, office supplies, cleaning supplies and other miscellaneous supplies.
 - J. Audit. Performance or financial audits that may be required by the City.
 - K. Advertising and marketing expenses.
 - L. Travel. Travel for reasonable, necessary and normal business purposes is a Direct Cost, but must comply with City policies for reimbursement limits. These limits include flying coach on airlines; food and lodging is limited to the City's policy or General Services Administration (GSA.gov) Per Diem. Travel will only be reimbursed for Operator's employees, and not for any family or non-employees traveling with the employee.
 - M. Telephone, postage and freight directly related to the operation of the Golf Course.
 - N. Utilities including natural gas, water, electric power, telephone, garbage, recycling and trash collection which are direct costs of the golf operations whether paid by Operator or City.
 - O. Parking lot maintenance.
 - P. Washington State Business and Occupation taxes on the Direct Costs or reimbursement of same.
 - Q. Refunds. Refunds will be expensed and not deducted from revenue, and will be reimbursed by the City.
- 7.2 Direct Cost Budget. The Direct Cost Budget is a portion of the Budget including inventory.
- 7.3 Excluded Operating Costs. Those operating costs that are paid by the City but are not included in the Direct Cost Budget include and are not limited to the following:
- A. Those maintenance and/or operating costs that are due to any reason beyond Operator's reasonable control, an occurrence of force majeure including, without limitation, acts of God, riots, strikes, fires, provided, however, that such expense shall

continue only during the pendency of the particular occurrence of force majeure. Such excluded costs must exceed Five thousand dollars and no cents (\$5,000.00) per incident, and these costs are subject to the prior approval of the Director or designee. If such costs do not exceed Five thousand dollars and no cents (\$5,000.00) per incident, they shall be treated as Direct Costs.

B. Base Management Fees and Annual Growth Incentive Fee paid as part of this contract to the Operator.

7.4 Capital Expenditures. A Capital Expenditure is not a Direct Cost and must be approved by the Director or designee before it may be undertaken. The City may responsible for the cost of any Capital Expenditure. The City may request that the Operator contract for and make capital improvements and reimburse the Operator for these improvements per the Capital Budget and subject to applicable public works laws and procedures.

Any Capital Expenditures other than minor construction to be managed or implemented by Operator will be under a separate agreement between the City and the Operator or as an approved Amendment to this contract.

8. OPERATOR COMPENSATION.

8.1 Base Management Fee. During the term of the agreement, the City shall pay the Operator, an annual fee of Ninety-Six Thousand Dollars and No Cents (\$96,000.00) per year or on a monthly basis, a fixed amount of Eight Thousand Dollars and No Cents (\$8,000.00) per month (the "Management Fee"). The Management Fee for any partial month during the Term shall be made pro rata based upon the number of days in the month when this Agreement was in effect. For the purposes of pro rata calculations only it is agreed months will contain thirty (30) days. The City will pay the Management Fee by check mailed to the Operator within seven (7) working days (excluding City holidays) after receipt and City acceptance without contest or question of the Monthly Report and supported by an invoice from the Operator. Starting in year two, any increases to the Management Fee shall be based on the Seattle-Tacoma-Bremerton Consumer Price Index (CPI-W) for June with no less than zero percent (0%) and no greater than three percent (3%).

8.2 Annual Growth Incentive Fee

During the course of this Contract, the City shall pay the Operator an Annual Growth Incentive based on the financial performance of the golf course. The City shall pay the Operator a five percent (5%) annual growth incentive if Total Net Revenues exceed base level adjusted annually for inflation as the CPI identified in Section 8.1 of this Agreement. Total Net Revenues is total revenues excluding sales tax, admission tax and cost of goods sold from Merchandise and Lessons. The following table depicts a sample to be used to calculate the annual growth incentive. For calculation of the Annual Growth Incentive percent growth direct operating expenses will not exceed the percent growth of Net Revenues.

Example

| | 2014 | % Net | Base | 2015 Est. | 2016 Est. | 2017 Est. | 2018 Est. |
|-------------------------|------------|-------|------------|------------|------------|------------|------------|
| Green Fees | 584,344.43 | 100% | 584,344.43 | 598,953.04 | 613,926.87 | 629,275.04 | 645,006.91 |
| Golf Cart Rentals | 165,940.02 | 100% | 165,940.02 | 170,088.52 | 174,340.73 | 178,699.25 | 183,166.73 |
| Merchandise | 86,209.21 | 35% | 30,173.22 | 30,927.55 | 31,700.74 | 32,493.26 | 33,305.59 |
| Lessons | | 80% | - | 2,000.00 | 2,050.00 | 2,101.25 | 2,153.78 |
| Total | 838,507.66 | | 780,457.67 | 801,969.12 | 822,018.34 | 842,568.80 | 863,633.02 |
| Net Revenue Growth | | | | 21,511.44 | 20,049.23 | 20,550.46 | 21,064.22 |
| Annual Growth Incentive | | | | 1,075.57 | 1,002.46 | 1,027.52 | 1,053.21 |

Cost of Goods Assumptions

| | |
|-------------|-----|
| Merchandise | 35% |
| Lessons | |
| Commissions | 80% |

8.2.1 Between Effective Date of the Contract and calendar year 2015, the Contractor will not receive an incentive payment. It will only receive its management fee (in addition to reimbursement of direct costs and merchandise cost of goods sold).

8.2.2 Incentive payments are made based on the prior year Net Revenue. Payment will be made by the end of the first quarter for the preceding calendar year, subsequent to the financial closeout and verification of the prior year's performance.

8.3 Payment Procedures.

8.3.1 After receipt from the Operator of applicable invoices that have been approved without contest and accepted by the City, the City shall reimburse the Operator by mailed check for Direct Costs by the Operator within fourteen (14) business days, excluding City holidays and weekends, after receipt of the Operator's invoices in a form approved by the City.

8.3.2 The Operator shall submit original copies of all bills and invoices. Each bill and invoice shall be approved and shall be signed by an Operator management employee.

8.4 Reimbursement Submittals. The Operator will submit receipts, invoices for all Direct Costs and expenses to the City according to a schedule that has been approved by the City. The City reserves the right to review all reimbursement submittals, seek justification from the Operator and once accepted by the City, issue a reimbursement.

Salary reimbursement requests must include by employee: name, total hours, pay rate, total cost, and cost for each benefit (taxes, health insurance, etc.). The request must include a report from the Operator's payroll system that includes the above information.

- 8.4.1 At year-end, any reimbursement request must be separated by calendar year; any single request that includes expenses from two calendar years will not be reimbursed and returned to the Operator for resubmission as separate requests by year. To meet city's year-end close year-end reimbursement must be submitted within the first full week of January.
- 8.4.2 Reimbursement Summary. Each request shall include a summary that includes sub-totals listing each vendor, date paid, check number and amount. Attached to the summary will be the original invoice that was paid. A copy of the check must be attached to each invoice(s). Vendor invoices shall include detailed itemization and be on the vendor's letterhead or invoice with the vendor's name, address, etc., or if on an invoice form provided by the Operator, shall include identifying information and the vendor's signature.
- 8.4.3 Payment Approval and Certification. Prior to submission of any requests for reimbursement, the Operator shall provide a letter signed by the Operator's CEO that identifies all employees authorized to sign and approve reimbursement requests (on the summary page). Each summary invoice shall include a certification statement as follows:

"I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, services rendered or labor performed as described herein and the claim is a just, due and unpaid obligation against the City by the Operator, and I am authorized to authenticate and certify to said claim." The certification shall be signed and dated.

9. FINANCIAL AND ACCOUNTING PROCEDURES

- 9.1 Accounting Procedures. The Operator shall employ a method of accounting for all the revenues and expenses in connection with the operation of the Golf Courses in accordance with Generally Accepted Accounting Principles (GAAP), and that correctly and accurately reflect the gross receipts and disbursements received or made by the Operator from the operation of the Golf Courses. The Operator shall establish and implement adequate internal controls for this operation and all cashing and cash handling that comply with GAAP, and with the City's cash handling policies. The method of accounting, including bank accounts, established for the operation shall be separate from the accounting system used for any other business operated by the Operator.
- 9.2 Monthly Reports and Transactions. The Operator shall provide to the City a Monthly Report of the previous month's transactions and financial status of the Golf Courses.
- 9.2.1 Monthly Report. Within twenty (20) days of the end of each month, the Operator shall provide the City with a Monthly Report that includes the current month and year-to-date balance sheet, cash flow report, purchase records, inventory levels and income statement.
- 9.2.2 On a weekly basis and schedule provided by the City, the Operator will provide a copy of every bank deposit slip and a copy of every credit card batch settlement for the previous week, and a revenue report that separates the revenue by category and source approved by the City. Deposits must be made no less than indicated in the "Deposit Exception Certification" in Exhibit E.
- 9.2.3 After review of the above items, the City may request additional reports that detail previous transactions.

10. BUSINESS RECORDS.

- 10.1 Types of Records. The Operator shall keep and store within the city limits of Marysville, Washington the following records and documents:
- A. Regular books of account such as general ledgers;
 - B. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.;
 - C. Sales tax returns and checks and other documents proving payment of sums shown;
 - D. Cash register tapes or computerized records for the identification of day-to-day sales;
 - E. Logs showing the dates and times of greens usage and Golf Lessons at the Golf Course; and
 - F. Any other accounting records that the City, in its sole discretion, deems necessary for proper reporting of receipts.
 - G. All books and records will be turned over to the City after three (3) years for retention in City archives, in City-authorized storage boxes with a completed City archival form attached to each box as required and requested by the City Archivist.
- 10.2 Audit of Records. All documents, books and accounting records kept by the Operator pursuant to this Agreement shall be open for inspection by representatives of the City during usual business hours and at a location within the Marysville City limits during the term of this Agreement and for at least three (3) years thereafter. In addition, the City or its authorized representative may, from time to time, conduct an audit of the books of the operation of the Golf Courses and observe the operation of the business. The City will use its best efforts to minimize the interruption with the normal operation of the Golf Courses during any inspection or audit performed pursuant to the provisions of this section. The City and Operator will independently conduct and jointly conduct "surprise" cash and inventory audits as each deems appropriate. The results of the audits will be documented in a written report, a copy of which will be given to both parties.
- 10.3 Annual Financial Statements. The City may request and the Operator shall provide to the satisfaction of the City audits of financial statements and Golf Course operations. The audit shall be performed by independent certified public accountants or other persons designated by the City, and the cost of the audit shall be included as a Direct Cost of operation.
- 10.4 Public Records. All information obtained in connection with the City's inspections of the records or audits and all information submitted to the City may be or become subject to public inspection and/or reproduction as public records.
- 10.5 Loss of Assets. The Operator will provide the City with a report for any loss of assets (including cash) that exceeds \$100 (one hundred dollars). The report shall be submitted to the Director of designee within two (2) working days after discovery of the loss of the asset. The report shall be submitted on the City's Loss Report form as provide by the City and:
- 10.5.1 The exact or estimated amount of the loss.
 - 10.5.2 Composition of the loss (cash/checks).
 - 10.5.3 Date of the loss.
 - 10.5.4 When and how the loss was discovered.
 - 10.5.5 Whether it is known, who is responsible for the loss (and, if so, the name).
 - 10.5.6 A copy of the police report shall be included in the report to the City.
 - 10.5.7 Whether the loss is covered by insurance.

11. INSURANCE AND INDEMNITY.

11.1 Insurance.

- A. **Worker's Compensation Insurance.** The Operator shall keep in full force and effect at all times during the term of this Agreement worker's compensation insurance for all workers employed pursuant to this Agreement in compliance with RCW 51 and any applicable Federal statute. If any work is sublet, the Operator shall require its sub operator(s) similarly to provide worker's compensation insurance for all of the latter's employees unless all the employees are covered by the Operator.
- B. **Liability Insurance.** The Operator shall keep in full force and effect, at all times during the term of this Agreement, Commercial General Liability ("CGL") insurance using Insurance Services Office form CG0001(04-13) or the equivalent (including Premises/Operations, Products/Completed Operations, Personal Injury/Advertising Injury, Contractual Liability, Independent Contractors. Limits shall be not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Employer's Liability with limits not less than \$1,000,000 each accident, \$1,000,000 each employee and \$1,000,000 aggregate. Liquor Liability with limits not less than \$2,000,000 each occurrence and \$2,000,000 aggregate. Commercial Automobile Liability using Insurance Services Office form CA0001 (03-10) or the equivalent providing coverage for owned autos (if any), non-owned autos and hired autos. Umbrella/Excess Liability insurance with limits not less than \$5,000,000 each occurrence and \$5,000,000 aggregate. Such policy shall provide limits in excess of Commercial General Liability, Employer's Liability and Commercial Automobile Liability. "The City of Marysville shall be included as an additional insured under each policy for liability caused in whole or in part by the Operator. Coverage shall be primary and non-contributory with any insurance or self-insurance maintained by the City. The City shall be additional insured for both ongoing and completed operations on the Commercial General Liability policy using Insurance Services Office forms CG 2010(04-13) and CG2037(04-13) or the equivalent.
- C. **Property Insurance.** The City shall insure or self-insure real property and personal property, including new buildings and additions under construction on City premises (but excluding land such as greens, fairways, trees and landscaping), inventory and mobile equipment (including leased mobile equipment) for the current replacement value thereof subject to various deductibles for the benefit of both the City and Operator. The City shall obtain from its property insurer a waiver of subrogation in favor of the Operator to the extent that property insurance applies to any loss. In addition, the City agrees to waive its rights of recovery for claims involving damage to City property in excess of \$1,000 for any loss within the applicable deductible amount. The Operator shall insure any personal property owned by the operator and kept on-site at the Golf Courses, is responsible for the cost of any insurance on Operator's personal property kept on-site at the Golf Courses, and such amount will not be a Direct Cost. The Operator hereby releases the City from any claim arising in any way from loss or damage to Operator's personal property.
- D. **Commercial Crime Insurance.** The Operator shall keep in full force and effect at all times during the term of this Agreement a Commercial Crime insurance policy in the amount of \$500,000 for employee dishonesty and coverage for theft, disappearance and destruction of or to monies or funds of, in or at the Golf Courses in an amount as dictated by the exposure at any given time.. All amounts set forth in herein shall be per occurrence and in the aggregate. The Operator also shall maintain such Employee Dishonesty on behalf of the City whereby in the event any officer, employee, agent or subcontractor of Operator embezzles, steals or otherwise fraudulently or improperly takes or obtains City funds, money or property, the City shall be reimbursed for the total amount of funds taken up to \$500,000per occurrence. Such policy shall be endorsed to include loss to "Client's Property" using Insurance Services Office form CR0401 (08-13) or the equivalent. City of Marysville shall also be included as a Loss Payee on the Employee Dishonesty Insurance.
- E. **Evidence of Insurance.** The Operator's professional insurance broker shall deliver to

the City, in a timely manner, certificates of insurance and copies of declarations pages, schedules of endorsements and additional insured policy provisions for all insurance required pursuant to this Agreement acceptable to the City. Each insurance policy required hereunder shall provide that cancellation shall not be made without 30 days (10 days with respect to cancellation for non-payment of premium) prior written notice to the City. Insurance Certification shall be issued to, and notice of cancellation/reinstatement may be mailed to:

City of Marysville
 City Clerk
 1049 State Avenue
 Marysville, WA 98270

Insurance certification shall be mailed, or delivered electronically (as may notice of cancellation/reinstatement) by email to CityClerk@marysvillewa.gov facsimile transmission to 360-363-8042

All insurance required shall be provided by insurers authorized to provide insurance coverage in the State of Washington pursuant to RCW Chapter 48 and shall be rated by A.M. Best Company as an A(-) VII or better. Approval by the City of the insurance herein shall not limit, relieve or decrease the liability of the Operator.

- F. Cost of Insurance. The cost of the insurance required by this section and any deductible that the Operator pays for claims on the insurance required by in this Section (except claims less than \$1,000 involving damage to City property only to the extent to which Operator is responsible for the damage under subsection 11.1.C.) shall be Direct Costs and shall be borne by the City.

11.2 Indemnity.

- A. The Operator shall defend, protect, indemnify and hold the City, its officers, elected officials, volunteers, agents and employees from and against any and all suits, judgments, causes of action, claims, losses, demands, damages, liabilities, and expenses, including, but not limited to, attorney's fees and costs of litigation, resulting from death or injury to any person or damage or destruction of any property or property rights arising out of or relating to any act or omission of the Operator, its agents, subcontractors, or employees, or arising out of or relating to the work to be performed under this Agreement, including any breach of Operator's obligations herein. In the event a claim or legal action is covered by RCW 4.24.115, Operator's duty to indemnify and defend shall not extend to damages resulting from the City's sole negligence, and in the case of concurrent negligence shall apply to the extent of the negligence attributed to the Consultant, its employees, subcontractors and agents.
- B. The Operator shall defend, indemnify and hold harmless the City for any fines imposed by administrative regulatory bodies, except for fines resulting from and directly related to action for which the City is solely and completely responsible. In the event the City is only partially responsible for said action or inaction, the Operator shall defend, indemnify and hold harmless the City for the full amount of such fines.
- C. The City does not and shall not waive any rights against the Operator which it may have under this Section 11.2 because of the acceptance by the City of any of the insurance policies described in Section 11.1.
- D. The indemnity provisions in this Section 11.2 shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the operations of this Agreement, regardless of whether or not the insurance policies referred to herein shall have been determined to be applicable to any of such damages or claims for damages.
- E. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Operator's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City and to the extent necessary to provide City with a full and complete

indemnity from claims made by Operator's employees.

- F. THE OBLIGATIONS UNDER THIS SECTION 11.2 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT. OPERATOR AND THE CITY EACH REPRESENT THAT THIS SECTION WAS MUTUALLY NEGOTIATED AND AGREED UPON.

12. REPRESENTATIONS AND WARRANTIES.

- 12.1 **Organization and Authority.** As of the date of this Agreement and thereafter, the Operator hereby represents and warrants that (a) it is a Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business in all other states where necessary in light of its business or properties and has all requisite power and authority to conduct its business and own its property utilized under this Agreement, (b) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement, (c) the execution, delivery and performance by the Operator under this Agreement has been duly authorized by all necessary action and this Agreement has been duly and validly executed and delivered by the Operator, and (d) this Agreement constitutes the legal, valid and binding obligation of the Operator and is enforceable against the Operator in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the rights of creditors generally.
- 12.2 **No Conflict.** As of the Effective Date and thereafter for the term of this Agreement, the Operator hereby represents and warrants that the execution, delivery and performance by the Operator of this Agreement does not and will not a) conflict with or violate any provision of its articles of incorporation or bylaws, b) result in a material breach or violation of any term or provision of, or constitute a material default under, any material agreement or instrument to which the Operator is a party or by which the Operator or any of its assets are bound, or c) contravene or constitute a material default under any provision of applicable law or regulation.
- 12.3 **Accuracy of Representations Warranties.** The representations and warranties contained in this Agreement do not contain any untrue statement of a material fact or omit any material fact necessary in order to make the statements contained herein not misleading or incomplete.
- 12.4 **Survival of Representations and Warranties.** The representations and warranties set forth by the Operator in this Article 12 shall survive the date of this Agreement and shall terminate only upon the sixth anniversary of the date of termination of this Agreement.

13. DEFAULT AND TERMINATION

- 13.1 **Default.** If Operator violates breaches or fails to keep or perform any term, provision, covenant or obligation under this Agreement, the City may provide the Operator with written notice specifying the failure or breach and providing a period of time determined by the City as reasonably necessary to cure the failure or breach. If Operator's breach relates to a monetary obligation, a reasonable time to cure will not exceed ten (10) days. If the Operator does not cure the breach or failure within the time required by the City's notice, Operator's breach will be a "Default". If the cure cannot reasonably be completed in the time provided by the City, Operator will not be in Default if a cure is commenced within the notice period and thereafter diligently pursued to timely completion. No waiver by the City of any Operator breach or Default hereunder shall be construed to be or act as a waiver of any subsequent breach or Default by the Operator.
- 13.2 **City Remedies.** If the Operator fails to cure any Default, the City shall have the following nonexclusive rights and remedies at its option: (1) to cure such Default on Operator's behalf and at Operator's sole expense and to charge Operator for all actual and reasonable costs and expenses incurred by City in effecting such cure; (2) to immediately terminate this Agreement upon written notice to Operator.
- 13.3 If there is an Operator Default, the City shall not be liable for damages by reason of

termination or City entry onto the Golf Courses. The City may also avail itself of any other remedy provided by law.

- 13.4 This Agreement may be terminated by the City without cause upon ninety (90) days' written notice to Operator. Operator will be paid for all Work performed prior to the termination date in accordance with the compensation provisions set forth in Section 8 herein. The City reserves the right to cancel this Agreement with cause, effective at a time of its choosing, by providing written notice of termination to Operator. Work in progress would be completed at the City's option.
- 13.5 This Agreement is contingent upon the City Council's appropriation of sufficient funds for the Work contemplated under this Agreement. In the event that sufficient funds are not appropriated for the Work, the City shall have the right to terminate the Agreement, effective immediately, without termination charge or other liability, by providing written notice of termination to Operator.

14. MISCELLANEOUS.

- 14.1 Entire Agreement. This Agreement and the documents expressly referred to herein constitute the entire agreement among the parties with respect to the subject matter hereof and supersede any prior agreement or understanding among the parties with respect to such subject matter.
- 14.2 Severability. If any provision of this Agreement or the application of such provision to any party or circumstance shall be invalid, the remainder of this Agreement or the application of such provision to other parties or circumstances shall not be affected thereby.
- 14.3 Notices. All notices, requests, demands, consents and other communications required or permitted to be given by this Agreement shall be in writing and personally delivered or placed in the United States mail, properly addressed and with full postage prepaid, certified and return receipt requested. Such notices shall be deemed received at the earlier of (a) the date actually received, or (b) five (5) business days after such mailing. Such notices shall be sent to the parties at the following addresses, unless other addresses are furnished by appropriate notice:

If to the City, to:

City of Marysville
City Clerk
1049 State Avenue
Marysville, WA 98270

If to the Operator, to:

Premier Golf Centers, LLC
Bill Schickler
2466 Westlake Avenue North #8
Seattle, WA 98109

- 14.4 Assignment; Subcontract. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors and assigns. Operator shall not assign any of its rights or delegate any of its duties under this Agreement to a third party unless a) the Director or designee gives his/her prior approval, in writing, of the third party contract prior to execution, and b) the third party contract is consistent and complies with the terms and conditions of this Agreement. For purposes of this Section, if Lessee is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Lessee's outstanding voting stock, shall constitute an assignment for the purposes of this

Lease. If Lessee is a partnership, then a change in general partners in or voting or decision-making control of the partnership shall also constitute an assignment.

- 14.5 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute one in the same instrument.
- 14.6 Headings. The article and section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.
- 14.7 Governing Law and Venue. This Agreement shall be construed and enforced according to the laws of the State of Washington without regard to any otherwise governing principals of conflicts of laws. Venue for any action relating to or arising from this Agreement will be in the Superior Court of Snohomish County. This Agreement shall be construed neutrally and not in favor of or against any party.
- 14.8 Amendment. This Agreement shall not be modified or amended except by a written agreement executed by both of the parties.
- 14.9 Further Actions. Each party shall execute and deliver such other certificates, agreements and documents, and take such other actions, as may reasonably be required to carry out the provisions or the intent of this Agreement.

IN WITNESS THEREOF, City of Marysville and Operator have caused this Agreement to be executed by its proper officers on the dates shown below.

CITY OF MARYSVILLE

PREMIER GOLF CENTERS, LLC

Jon Nehring, Mayor

Signature

Date

Printed Name

ATTEST BY:

Title

Sandy Langdon, City Clerk

Date

Date

APPROVED AS TO FORM:

Jon Walker, City Attorney

Date



Property Description for Cedarcrest Golf Course

Parcel # 30052300300300

Address: 6810 84TH ST NE, MARYSVILLE, WA 98270-7818 SEC 23 TWP 30 RGE 05TH PTN OF SW1/4 & NW1/4 DAF BEG CONC MON AT CTR OF SEC 23 TH N00°00 47E ALG C/L FOR 163.31FT TO S LN GETCHELL HILL RD TH S88°32 29W ALG S LN SD RD 725.42FT TAP 1FT E OF CHAINLINK FENCE TPB TH S11°28 18E 123.37FT THS18°08 49W 127.89FT TH S10°45 12W 326.41FT TH S02°39 20W 114.14FT TH S24°53 05W 160.57FT TH S15°49 47E124.85FT TH S03°34 16W 83.64FT TH S 368.16FT TO S LN NE1/4 SW1/4 TH S87°26 07W ALG S LN TO E LN MARYSVILLE ARLINGTON HWY TH N ALG E LN SD HWY TO S LN GETCHELL HILL RD TH E ALG S LN SDRD TO TPB TGW SW1/4 SW1/4 & W 450FT OF SE1/4 SW1/4 LESS PTN DAF BEG SW COR SEC TH E TO E LN MAR-ARL RD TPB TH N ALG SD E LN 330FT TH E 570FT TH SELY TAP ONS LN SD SUB 1000FT E OF TPB TH W

TO TPB & LESS S 20FT THOF & LESS PTN LY WHN 76TH ST NE WHN PLAT OF MUNSON
CREEK ESTATES DIV 1 & TGW TH PTN NW1/4 DAF BEG SW COR NW1/4 TH N00*45 20E
ALG W LNSEC 217.50FT TO C/L GETCHELL HILL RD TH N89*15 20E ALG SD C/L 287.87FT
TH N00*4440W 20FT TO NLY MGN SD RD & TPB TH CONT N00*44 40W 200FT TH N89*15
20E225FT TH S00*44 40E 200FT TO NLY MGN SD RD TH S89*15 20W ALG SD RD 225FT
TO TPB LESS ADD'L R/W TO SNO CO PER DEED IN DED REC AF NO 9509290824 VOL
3078 PG 1530

EXHIBIT B
HOURS OF OPERATION to be negotiated

| DATE | 1 st Tee | 1 st Tee | TWILITE STARTS | TWILITE LATE RATE | GOLF SHOP CLOSES |
|-------------------------------------|---------------------|---------------------|-------------------|----------------------|------------------------|
| | Time Weekday | Time Weekend | | | |
| JANUARY 1 - JANUARY 15 | 7:45 AM | 7:45 AM | 1:00 PM | 1:00 PM | 4:00 PM |
| JANUARY 16 - JANUARY 31 | 7:30 | 7:30 | 1:00 | 1:00 | 4:30 |
| FEBRUARY 1 - FEBRUARY 15 | 7:00 | 7:00 | 1:00 | 1:00 | 5:00 |
| FEBRUARY 16 - FEBRUARY 29 | 6:45 | 6:45 | 1:00 | 1:00 | 5:30 |
| MARCH 1 - MARCH 8 | 6:30 | 6:30 | 2:00 | 4:00 | 6:00 |
| SAVINGS TIME BEGINS DAYLIGHT | | | | | |
| MARCH 9 – MARCH 31 | 6:45 | 6:45 | 3:30 | 5:30 | 7:30 |
| APRIL 1 - APRIL 15 | 6:15 | 6:15 | 3:45 | 5:45 | 8:00 |
| APRIL 16 - APRIL 30 | 6:00 | 6:00 | 4:15 | 6:15 | 8:15 |
| MAY 1 - MAY 15 | 5:30 | 5:30 | 4:30 | 6:30 | 8:30 |
| MAY 16 - MAY 31 | 5:30 | 5:15 | 5:00 | 7:00 | 9:00 |
| JUNE 1 - JUNE 15 | 5:30 | 5:00 | 5:00 | 7:00 | 9:00 |
| JUNE 16 – JUNE 30 | 5:30 | 5:00 | 5:00 | 7:00 | 9:00 |
| JULY 1 - JULY 15 | 5:30 | 5:00 | 5:00 | 7:00 | 9:00 |
| JULY 16 - JULY 31 | 5:30 | 5:30 | 5:00 | 7:00 | 9:00 |
| AUGUST 1 - AUGUST 15 | 5:45 | 5:45 | 5:00 | 7:00 | 9:00 |
| AUGUST 16 - AUGUST 31 | 6:00 | 6:00 | 4:30 | 6:30 | 8:30 |
| SEPTEMBER 1 - SEPTEMBER 15 | 6:30 | 6:30 | 4:00 | 6:00 | 8:00 |
| SEPTEMBER 16 - SEPTEMBER 30 | 6:45 | 6:45 | 3:00 | 5:00 | 7:00 |
| OCTOBER 1 - OCTOBER 15 | 7:00 | 7:00 | 2:30 | 4:30 | 6:30 |
| OCTOBER 16 - NOVEMBER 1 | 7:15 | 7:15 | 2:00 | 4:00 | 6:00 |
| DAYLIGHT SAVINGS TIME ENDS | | | | | |
| NOVEMBER 2 – NOVEMBER 15 | 7:00 | 7:00 | 1:00 | 1:00 | 4:45 |
| NOVEMBER 16 - NOVEMBER 30 | 7:30 | 7:30 | 1:00 | 1:00 | 4:30 |
| DECEMBER 1 - DECEMBER 15 | 7:45 | 7:45 | 1:00 | 1:00 | 4:00 |
| DECEMBER 16 – DECEMBER 31 | 7:45 | 7:45 | 1:00 | 1:00 | 4:00 |

HOLIDAYS

JANUARY 1 (NEW YEARS DAY)
MAY 26 (MEMORIAL DAY)
JULY 4 (INDEPENDENCE DAY)
SEPTEMBER 3 (LABOR DAY)
NOV. 22/23 (THANKSGIVING)
DECEMBER 25th -CLOSED

PLEASE NOTE

* The Golf Shop doors open approximately 15 minutes before the day's first tee time.

** The first tee time is an approximation. Premier GC reserves the right to open earlier or later depending on weather and daylight conditions.

EXHIBIT C

CEDARCREST GOLF COURSE MAINTENANCE STANDARDS

The City expects that the Operator continue to operate and maintain the course with qualified personnel that maintain a Golf Course Superintendent Association of America (GCSAA) Class A certification or equivalent.

To perform course maintenance, a Golf Course Maintenance Superintendent, one assistant, and one to five greens keepers are to be employed at the golf course. Maintenance operations at golf courses include turf and landscape maintenance for approximately 99 acres of land as defined in the legal description.

Maintenance functions include:

- General golf maintenance
- Irrigation maintenance
- Equipment repair
- Small Project Construction

Turf and landscape maintenance involves mowing of tees, greens, fairways, roughs and entryways. Turf maintenance also includes aerification, overseeding, and fertilizer and pesticide applications.

Daily golf maintenance includes moving tee markers, cutting putting green cups, servicing ball washers and trash containers, raking bunkers, and course inspection.

Irrigation maintenance includes service and repair of wells, pumping stations, piping, controllers, and heads. Additionally, closely monitoring, recording, and reporting water usage is a very important duty.

Golf maintenance staff will perform all equipment repairs and service, including oil changes and routine service, tire repairs, engine overhauls, reel and bedknife grinding, and equipment restoration work. All work and records are to be managed according to the City's Standard Operating Procedure Manual for Cedarcrest Golf Course.

Construction projects may include irrigation and drainage improvements, turf renovation, expanded teeing areas, and bunker reconstruction. Maintenance personnel also perform numerous odd job repairs to the Pro-Shop and other structures and course amenities. There are five (5) structures owned and maintained by the City of Marysville. These include the one Pro-Shop, one outdoor restroom, one restaurant (excluded), one maintenance shop and one pump house. The Golf Course Superintendent will oversee contractor repairs of these structures and their system at the respective golf courses.

Produce High Quality Golf Course

The major key to successful golf operation is the presentation of a product that is consistent with the demands of the golfers served. The City expect smooth greens, weed-free fairways and tees, and well-manicured bunkers and landscapes, maintained cart paths, clean facilities, courteous service, and excellent service.

The Golf Course Superintendent and maintenance staff will produce vibrant, healthy, manicured turf from tee to green, properly set up each course for daily play as needed, and make all repairs quickly, effectively and efficiently. The Superintendent will manage resources wisely to preserve the environment and effectively control costs. The Superintendent will follow all state mandates concerning water usage

and pesticide herbicide reporting and will maintain valid Washington State Pesticide Applicator licensing and maintain record of all pesticides applied on the course.

Additionally, the Superintendent will commit to continuous turf maintenance and agronomic education. Superintendent will assure fair and equitable course set up conducive to expected play patterns, based on weather, tournament and tee sheet scheduling, and anticipated play volume. Golf Course Superintendent will be expected to meet established criteria for mowing frequencies, turf coverage, greens speeds, weed and pest control, bunker maintenance, and irrigation and equipment maintenance. Superintendent will also be expected to maintain very good to excellent customer survey ratings.

Golf Professional, Superintendent and maintenance staff will assure clean, safe, and attractive pro shop and external grounds, including front parking area, food and beverage patio support, and cart fleet services and cart path network, to provide each individual customer with their respective needs.

EXHIBIT D

STANDARD OPERATING PROCEDURES MANUAL
CEDARCREST MUNICIPAL GOLF COURSE

The City's Standard Operating Procedures Manual will be provided to the Operator as a reference for Policy Governing Play, Standard Operational Procedures and will be updated by Operator with Pro Shop Controls and Maintenance Division Internal Controls within the first operating cycle of the Agreement

Exhibit E



DEPOSIT EXCEPTION CERTIFICATION

RCW 43.09.240

I, Jim Ballew as Director for Golf/Parks and Recreation request deposit exception as allowed under RCW 43.09.240 as stated below. Deposit exception will be as follows:

Deposits will be made a minimum of once a week during the off season, October through March. During the peak season, April through September, deposits will be a minimum of twice a week.

I CERTIFY THAT THE MONEY RECEIVED UNDER MY SUPERVISION IS HELD WITH PROPER SAFEKEEPING INCLUDING PROPER THEFT PROTECTION TO REDUCE RISK OF LOSS OF FUNDS.

Signature: [Handwritten Signature]

Date: 5.20.13

Department: Parks & Recreation / Golf

+++++

For Finance Use Only

City Treasurer Acceptance

Signature: [Handwritten Signature]

Date: 5/21/13

RCW 43.09.240

"Every public officer and employee of a local government shall keep all accounts of his or her office in the form prescribed and make all reports required by the state auditor. Any public officer or employee who refuses or willfully neglects to perform such duties shall be subject to removal from office in an appropriate proceeding for that purpose brought by the attorney general or by any prosecuting attorney.

Every public officer and employee, whose duty it is to collect or receive payments due or for the use of the public shall deposit such moneys collected or received by him or her with the treasurer of the local government once every twenty-four consecutive hours. The treasurer may in his or her discretion grant an exception where such daily transfers would not be administratively practical or feasible as long as the treasurer has received a written request from the department, district, or agency, and where the department, district, or agency certifies that the money is held with proper safekeeping and that the entity carries out proper theft protection to reduce risk of loss of funds. Exceptions granted by the treasurer shall state the frequency with which deposits are required as long as no exception exceeds a time period greater than one deposit per week.

In case a public officer or employee collects or receives funds for the account of a local government of which he or she is an officer or employee, the treasurer shall, by Friday of each week, pay to the proper officer of the local government for the account of which the collection was made or payment received, the full amount collected or received during the current week for the account of the district."

Update
Index #11

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 2/9/15

| | |
|--|---------------------------|
| AGENDA ITEM: Marysville Fire District - Contract Amendment | |
| PREPARED BY: Sandy Langdon, Finance Director/City Clerk | DIRECTOR APPROVAL: |
| DEPARTMENT: Finance | |
| ATTACHMENTS: <ol style="list-style-type: none"> 1. Second Amendment to Agreement for Joint Operation of Fire And Emergency Medical Protection Facilities 2. First Amendment to Agreement for Joint Operation of Fire And Emergency Medical Protection Facilities dated 6/14/10 3. Agreement for Joint Operation of Fire And Emergency Medical Protection Facilities dated 8//25/2003 | |
| BUDGET CODE: | AMOUNT: |
| SUMMARY: | |

The proposed second amendment to Agreement for Joint Operation of Fire and Emergency Medical Protection Facilities would amend existing language affecting the 2015 financial contribution to the Marysville Fire District.

The City and District 12 met to review the current and proposed financial contribution formulas and agreed to adjust the current formula for the 2015 contribution year.

RECOMMENDED ACTION:

City Staff and Marysville Fire District staff recommend that Council approve the proposed Second Amendment to Agreement for Joint Operation of Fire And Emergency Medical Protection Facilities.

DRAFT

**SECOND AMENDMENT TO AGREEMENT FOR JOINT OPERATION OF
FIRE AND EMERGENCY MEDICAL PROTECTION FACILITIES**

This Amendment to that certain Agreement between the parties hereto dated August 25, 2003 is entered into between SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 12, a municipal corporation, hereafter referred to as “District 12”, and the CITY OF MARYSVILLE, a municipal corporation, hereafter referred to as “City” as follows:

WHEREAS, the City completed a Fire and Emergency Medical Protection Services Study which recommended adjustment of the “Financial Contribution by City”; and

WHEREAS, the City and District 12 met to review current and proposed financial contribution formulas, and

WHEREAS, the City and District 12 recognize that the financial contribution by the City should be adjusted, NOW, THEREFORE,

The Agreement between the City and District 12 dated August 25, 2003 is hereby amended as follows:

1. Section 12.2 entitled “Financial Contribution By City” is hereby amended to read as follows:

For the period beginning January 1, 2015 to December 31, 2015 the City shall contribute to District 12 an amount calculated as follows:

The City shall contribute annually to District 12 an amount equal the prior year’s contribution multiplied by the percent change (rounded to the nearest tenth) in levy amount calculated as if the City and District 12 were combined. The calculation will follow the Department of Revenue formula. For description purposes the calculation will begin with the combining of the prior year levy amounts for the City and District 12, as determined by the Snohomish County Assessor, to determine the “base amount”. The base amount may be increased by 1% or Implicit Price Deflator (IPD), whichever is lower. In addition, new construction and state assessed property increase will be included with the assessed values for new construction multiplied by the prior year agreement levy rate and the current year’s state assessed property value less last year’s state assessed property value with the remainder multiplied by the prior year agreement levy rate. The agreement calculation will follow any and all limitations to property tax levies regulated by the State. Refunded amounts less than or equal to ten thousand dollars (\$10,000) may be included in the agreement levy rate. Refunded amounts over

ten thousand dollars (\$10,000) will be consider by the City upon requested by District 12 to the City’s executive office. Exhibit A provides for the calculation of the City’s contribution for the 2015 tax collection period. The City’s contribution shall be paid to District 12 in equal monthly installments.

- 2. The term of the second amendment to the agreement for joint operation of fire and emergency medical protection facilities will begin for the tax collection year beginning January 1, 2015 and remain in effect until termination of the original agreement.
- 3. Except as provided herein, all other provisions of the agreement between the parties dated August 25, 2003 shall remain in full force and effect, unchanged.

IN WITNESS WHEREOF, the parties have executed this Second Amendment this ____ day of February, 2015.

CITY OF MARYSVILLE

SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 12

Mayor

Chairperson

Attest:

Deputy City Clerk

Commissioner

Commissioner

Approved as to form:

City Attorney

Fire District Secretary

EXHIBIT A

Calculation of the City's Contribution for the 2015 Tax Collection Period

| PROPERTY TAX MODEL-Fire w/MSVL AV | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|--|------------------|------------------|------------------|------------------|------------------|------------------|
| ASSESSED VALUATION | Actual | Actual | Actual | 10/22/2014 | 10/23/2014 | 10/24/2014 |
| AV ADJUSTMENTS | | | | | | |
| Previous Year AV | 1,694,902,877 | 6,270,690,696 | 5,888,528,927 | 6,385,411,332 | 7,184,856,551 | 7,593,099,379 |
| Reassessment % | -11.4% | -7.4% | 7.4% | 11.8% | 5.0% | 5.0% |
| Reassessment Value | (193,687,653) | (461,178,569) | 433,986,482 | 752,848,080 | 359,242,828 | 379,654,969 |
| Appeals | | | | | | |
| Reassessed AV | 1,501,215,224 | 5,809,512,127 | 6,322,515,409 | 7,138,259,411 | 7,544,099,379 | 7,972,754,348 |
| Other AV Adjustments | | | | | | |
| New Construction | 57,277,036 | 79,016,800 | 60,759,049 | 46,597,140 | 49,000,000 | 49,000,000 |
| State Assessed Utilities | 10,276,128 | | 2,136,874 | | | |
| Annexations | 4,701,922,308 | | | | | |
| Other Adjustments | | | | | | |
| Total Other AV Adjustments | 4,769,475,472 | 79,016,800 | 62,895,923 | 46,597,140 | 49,000,000 | 49,000,000 |
| CURRENT YEAR AV | 6,270,690,696 | 5,888,528,927 | 6,385,411,332 | 7,184,856,551 | 7,593,099,379 | 8,021,754,348 |
| BASE TAX COLLECTIONS | | | | | | |
| | 2,368,537 | 9,406,036 | 8,832,793 | 9,015,465 | 9,171,410 | 9,325,672 |
| Bank Increase (not to exceed 1.06) | 1.01 | 1.01 | 1.01 | 1.01 | 1.01 | 1.01 |
| Bank Base Collection Limit Prior to AV adj | 2,392,222 | 9,500,096 | 8,921,121 | 9,105,620 | 9,263,124 | 9,418,929 |
| New Construction @ Prior Levy | 80,042 | 159,982 | 91,139 | 65,790 | 62,548 | 60,181 |
| St. Assessed Utilities @ Prior Levy | 14,360 | - | 3,205 | - | - | - |
| Annexations | 7,452,926 | | | | | |
| Subtotal Base Collections | 9,939,550 | 9,660,079 | 9,015,465 | 9,171,410 | 9,325,672 | 9,479,109 |
| Refunds | | | | | | |
| Total Base Levy Collections | 9,939,550 | 9,660,079 | 9,015,465 | 9,171,410 | 9,325,672 | 9,479,109 |
| Previous Year Levy Rate | 1.397 | 1.500 | 1.500 | 1.412 | 1.276 | 1.228 |
| Unlimited New Levy Rate | 1.585 | 1.640 | 1.412 | 1.276 | 1.228 | 1.182 |
| New Base Levy (not to exceed 1.50) | 1.5000 | 1.5000 | 1.4119 | 1.2765 | 1.2282 | 1.1817 |
| Total Allowable Collections | 9,406,036 | 8,832,793 | 9,015,465 | 9,171,410 | 9,325,672 | 9,479,109 |
| EMS LEVY | | | | | | |
| Base | 853,178 | 3,135,345 | 2,944,264 | 3,005,155 | 3,058,505 | 3,112,151 |
| Increase (not to exceed 1.06) | 1.01 | 1.01 | 1.01 | 1.01 | 1.01 | 1.01 |
| EMS Collection Limit Prior to AV adj | 861,710 | 3,166,699 | 2,973,707 | 3,035,207 | 3,089,090 | 3,143,273 |
| New Construction @ Prior Levy | 28,639 | 39,508 | 30,380 | 23,299 | 23,061 | 20,859 |
| St. Assessed Utilities @ Prior Levy | 5,138 | - | 1,068 | - | - | - |
| Annexations | 2,350,961 | | | | | |
| Subtotal Base Collections | 3,246,447 | 3,206,207 | 3,005,155 | 3,058,505 | 3,112,151 | 3,164,131 |
| Refunds | | | | | | |
| Total 1.06 EMS Levy Collections | 3,246,447 | 3,206,207 | 3,005,155 | 3,058,505 | 3,112,151 | 3,164,131 |
| Prior Year EMS Levy Rate | 0.50 | 0.50 | 0.50 | 0.50 | 0.47 | 0.43 |
| EMS Levy Rate (not to exceed .50) | 0.500 | 0.500 | 0.471 | 0.426 | 0.410 | 0.394 |
| Total EMS Levy Collections | 3,135,345 | 2,944,264 | 3,005,155 | 3,058,505 | 3,112,151 | 3,164,131 |

| LEVY RATE SUMMARY | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Regular Levy | 1.500 | 1.500 | 1.412 | 1.276 | 1.228 | 1.182 |
| Total Regular Levy | 1.500 | 1.5000 | 1.412 | 1.276 | 1.228 | 1.182 |
| Special Levies | | | | | | |
| EMS Levy | 0.50 | 0.50 | 0.47 | 0.43 | 0.41 | 0.39 |
| 94 G.O. Refund | - | - | - | - | - | - |
| Total Special Levies | 0.5000 | 0.5000 | 0.4706 | 0.4257 | 0.4099 | 0.3944 |
| TOTAL LEVIES | 2.000 | 2.000 | 1.883 | 1.702 | 1.638 | 1.576 |
| COLLECTIONS SUMMARY | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
| Regular Levy Collections | | | | | | |
| Total Regular Levy Collections | 9,406,036 | 8,832,793 | 9,015,465 | 9,171,410 | 9,325,672 | 9,479,109 |
| Special Levy Collections | | | | | | |
| EMS Levy | 3,135,345 | 2,944,264 | 3,005,155 | 3,058,505 | 3,112,151 | 3,164,131 |
| Voted GO Debt Service | - | - | - | - | - | - |
| Total Special Levy Collections | 3,135,345 | 2,944,264 | 3,005,155 | 3,058,505 | 3,112,151 | 3,164,131 |
| TOTAL ESTIMATED COLLECTION | 12,541,381 | 11,777,058 | 12,020,620 | 12,229,915 | 12,437,823 | 12,643,240 |
| | | -6.1% | 2.1% | 1.7% | 1.7% | 1.7% |
| | Actual | Actual | Actual | Estimate | Estimate | Estimate |
| City Fire Payment | 9,538,951 | 8,953,050 | 9,224,313 | 9,381,126 | 9,540,605 | 9,702,796 |
| Fire 12 Taxes Assessed | 3,006,377 | 2,827,493 | 2,900,448 | 2,967,343 | | |
| Total | 12,545,328 | 11,780,543 | 12,124,761 | 12,348,469 | 9,540,605 | 9,702,796 |
| Difference | (3,946) | (3,485) | (104,140) | (118,554) | | |