

Marysville City Council Work Session

November 1, 2021

7:00 p.m.

City Hall

PUBLIC NOTICE:

Pursuant to Governor Inslee’s Proclamation 20-28, in an effort to curtail the spread of the COVID-19 virus, City Council Meetings and Work Sessions will take place by teleconference. Councilmembers and members of the public will not attend in person.

To listen to the meeting without providing public comment:

Join Zoom Meeting

<https://zoom.us/j/92977133971>

Or

Dial by your location

1-888-475-4499 US Toll-free

Meeting ID: 929 7713 3971

Call to Order

Pledge of Allegiance

Roll Call

Approval of the Agenda

Presentations

Discussion Items

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

- 1. Approval of the October 11, 2021 City Council Meeting Minutes

Consent

Review Bids

Public Hearings

New Business

- 2. Consider the Vehicle Lease Agreement with Enterprise Fleet Management
- 3. Consider the Agreement with MacLeod Reckord for Preliminary Design of the Marysville to Lake Stevens Connector Trail in the Amount of \$495,460.19
- 4. Consider the Grant Agreement with Washington State Department of Commerce for Funding of the Preliminary Design of the Marysville to Lake Stevens Connector Trail in the Amount of \$504,700

Work Sessions are for City Council study and orientation – Public Input will be received at the November 8, 2021 City Council meeting.

Marysville City Council Work Session

November 1, 2021 **7:00 p.m.** **City Hall**

5. Consider the Access Agreement with Keystone Land, LLC for Property Located on 71st Ave NE
6. Consider the Agreement with PH Consulting, LLC for Engineering Design Services Associated with the Quiet Zone Project at Railroad Crossings within the City in the Amount of \$235,501.35
7. Consider the Interlocal Agreement with Snohomish County Public Works for Municipal Road and Street Services
8. Consider the Maintenance Agreement between the City of Marysville and WSDOT for the Roundabout East of the I-5/SR 529 Interchange
9. Consider a Review of the Sign Code – MMC Chapter 22C.160
10. Consider the Intergovernmental Agreement with Snohomish County Diversion Center
11. Consider the Interlocal Agreement Contract Extension for SCORE Jail Services
12. Consider the Interlocal Agreement Contract Extension for Jail Services Lake Stevens Police Department
13. Consider the Contract for Services and Purchasing Agreement with AXON in the Amount of \$896,025.24

Legal

Mayor's Business

Staff Business

Call on Councilmembers and Committee Reports

Adjournment/Recess

Executive Session

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

Reconvene

Work Sessions are for City Council study and orientation – Public Input will be received at the November 8, 2021 City Council meeting.

November 1, 2021 **Marysville City Council Work Session**
7:00 p.m.

City Hall

Adjournment

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 business days prior to the meeting date if any special accommodations are needed for this meeting.

City Council



1049 State Avenue
Marysville, WA 98270

**Regular Meeting
October 11, 2021**

Call to Order

Mayor Nehring called the October 11, 2021 City Council meeting to order at 7:00 p.m.

Invocation

Chaplain Kanehen gave the invocation.

Pledge of Allegiance

Mayor Nehring led the Pledge of Allegiance.

Roll Call

Present:

Mayor: Jon Nehring

Council: Council President Kamille Norton, Councilmember Jeff Vaughan, Councilmember Tom King, Councilmember Mark James, Councilmember Kelly Richards, Councilmember Steve Muller

Staff: Chief Administrative Officer (CAO) Gloria Hirashima, Finance Director Sandy Langdon, Community Development Director Haylie Miller, Information Services Director Worth Norton, Human Resources Manager Teri Lester, Utilities Director Karen Latimer, Public Works Director Jeff Laycock, Parks & Recreation Director Tara Mizell, Police Chief Erik Scairpon, Fire Chief Martin McFalls, Community Information Officer (CIO) Connie Mennie, Senior Prosecutor Jennifer Millett, Systems Analyst Mike Davis

Absent: Councilmember Stevens

Motion to excuse the absence of Councilmember Stevens moved by Councilmember James seconded by Councilmember Richards.

AYES: ALL

Approval of the Agenda

Motion to approve the agenda moved by Councilmember Muller seconded by Councilmember James.

AYES: ALL

Presentations

A. Snohomish Health District Public Health Update

Shawn Frederick, Administrative Officer from Snohomish Health District made a presentation regarding:

- disease trends in diseases other than Covid-19
- countywide trends in chronic disease and injuries
- environmental health safety activities
- land use activities
- maternal and child health outcomes
- vital records services improvements
- Covid-19 statistics
- organizational data
- funding, grants, and budgetary updates
- ways to get involved

Council President Norton expressed an interest in a more in-depth presentation regarding youth suicides as offered by Mr. Frederick. She also asked if suicide numbers overall were down or just youth. Mr. Frederick explained that the Health District doesn't have access to clear information regarding that.

Councilmember King thanked the Health District for their work in the past to make sure that Strawberry Festival food vendors are safe.

Audience Participation

None

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

Motion to approve Consent Agenda items 1, 2, 4 and 5 moved by Councilmember Richards seconded by Council President Norton.

AYES: ALL

Consent

1. Approval of the September 22, 2021 Claims in the Amount of \$1,226,348.98 Paid by EFT Transactions and Check Numbers 150601 through 150739

2. Approval of the September 29, 2021 Claims in the Amount of \$2,993,155.86 Paid by EFT Transactions and Check Numbers 150740 through 150809
4. Consider Approving the Easement Amendment for Project Roxy
5. Consider Approving the Interagency Agreement with Washington Traffic Safety Commission for Participation in the Target Zero Task Force and Related Grant Funding

Review Bids

Public Hearings

3. Consider an Ordinance Amending Title 22 of the Marysville Municipal Code by Amending Sections 22A.020.060, 22C.010.060, 22C.010.070, 22C.020.060, 22C.020.070, 22C.080.120; 22C.080.130, Establishing a New Chapter 22C.280, Enhanced Services Facilities; and Repealing Ordinance 3182, Which Renewed the Moratorium of Ordinance 3168

Director Miller summarized this topic as reviewed previously by the City Council.

The public hearing was opened at 7:34 p.m. and comments were solicited. There were none.

Council questions and comments: None

Motion to approve Ordinance No. 3196 moved by Council President Norton seconded by Councilmember King.

AYES: ALL

New Business

7. Consider Approving an Ordinance Adopting RCW 9.61.260, Cyberstalking, by Reference

City Attorney Walker had no new information on this item.

Motion to adopt Ordinance No. 3197 moved by Councilmember Richards seconded by Councilmember Muller.

AYES: ALL

8. Consider Approving an Ordinance Amending Chapter 6.56 of the Marysville Municipal Code to Add a Crime of Exposing a Minor Child to Domestic Violence and Providing for a Non-merger of Domestic Violence Crimes

Motion to approve Ordinance No. 3198 moved by Councilmember James seconded by Council President Norton.

AYES: ALL

- 9. Consider Approving an Ordinance Amending the 2021-2022 Biennial Budget and Providing for the Increase of Certain Expenditure Items as Budgeted for in Ordinance No. 3160

Finance Director Langdon reviewed proposed budget amendments for 2021-2022 including restructures in the Executive Department and Public Works Department, additional CDBG (Community Development Block Grant) CARES money received, and extra debt service payments for 156th overpass, security software updates, computer replacement and annual maintenance increase, and liability insurance premiums increase.

Motion to adopt Ordinance No. 3199 moved by Councilmember King seconded by Councilmember Richards.

AYES: ALL

Legal

Mayor’s Business

Mayor Nehring had the following comments:

- He cut the ribbon at Larry's Plumbing on Grove last week.
- He enjoyed attending the Spanish heritage event at Marysville Middle School last week.
- He signed a Joint Equity Statement with Tulalip and the School District this week.
- He did a ride-along with the vector crew this morning.
- He spoke on Saturday to some Washington Federation of State Employees about the Cascade Industrial Center and things Marysville is doing there.

Staff Business

Director Norton had no comments.

Chief Scairpon reported on the Safe in Blue event at Generations Church on Sunday. He gave an update on the body-worn camera program and highlighted two successes.

Finance Director Langdon had no comments.

Director Miller thanked Council for approving the ESF regulations and acknowledged work done by Allen Giffen when he was the Interim Community Development Director.

Chief McFalls had no comments.

HR Manager Lester had no comments.

CIO Mennie had no comments.

Director Laycock thanked Council for approving him as the new Public Works director and stated he was looking forward to the new position.

Director Latimer also thanked Council for approving her position Utilities Director and stated she is looking forward to great things in the future. She gave an update regarding color options for the Comeford Reservoir Refit Project and solicited feedback.

Councilmember James asked if a darker color might wear faster. Director Latimer replied that historically the colors seem to wear the same. Councilmember James spoke in support of Option C.

Councilmember Vaughan expressed concern that the word "Marysville" with the logo wouldn't be visible from I-5. He noted that historically they have just had city name on the tower in a large font as to be seen from I-5 and no logo. He was okay with the two-tone or a single color. Director Latimer indicated staff would check to make sure the scale of the font size is the same or similar to what it has been in the past.

Councilmember King spoke in support of option C.

Council President Norton thought any of the options would be nice. She thought maybe just having the city name on the tower would be cleaner.

Councilmember Richards said he liked Option C as long as the green doesn't fade faster than the gray. Director Latimer replied that she would check on that.

There was some discussion about whether or not Council should vote on this. City Attorney Walker explained it was up to Council. Councilmember Vaughan recommended that Council not vote, but allow staff to make the decision based on input from the Council. The rest of the Council agreed. Director Latimer replied that staff would keep Council apprised.

Director Mizell shared a picture of the mural that went up today.

City Attorney Walker welcomed Jeff Laycock and Karen Latimer to the director team.

CAO Hirashima had no further comments.

Call on Councilmembers and Committee Reports

Councilmember Richards requested an organizational chart for Public Works so Council can understand who does what now. Director Laycock indicated staff would provide that to Council.

Councilmember James commended Chief Scairpon for working with the new regulations.

Councilmember King:

- He congratulated Jeff Laycock and Karen Latimer.
- He was impressed with the ribbon-cutting at Larry's Plumbing.
- Marysville Food Bank Director Del Deierling announced he will be retiring at the end of the year. He will be sorely missed.
- There was a great Elvis show at the Opera House yesterday.
- The Cedar Avenue project is looking really nice.

Councilmember Muller also congratulated Jeff Laycock and Karen Latimer. He is anxious to see how the water tower looks when it gets done.

Councilmember Vaughan had no comments.

Council President Norton had no further comments.

Adjournment

Motion to adjourn the meeting moved by Councilmember Muller seconded by Councilmember Richards.

AYES: ALL


The meeting was adjourned at 8:03 p.m.

Approved this _____ day of _____, 2021.

Mayor
Jon Nehring

CITY OF MARYSVILLE AGENDA BILL
EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: November 8, 2021

AGENDA ITEM:	
Vehicle Lease Agreement with Enterprise Fleet Management	
PREPARED BY:	DIRECTOR APPROVAL:
JR Myers, Public Works Services Supervisor	
DEPARTMENT:	
Public Works – Fleet Division	
ATTACHMENTS:	
Enterprise Master Equity Lease Agreement 10 Year Fleet Planning Analysis	
BUDGET CODE:	AMOUNT:
50100048 564000 2101	\$
SUMMARY:	
<p>The City desires to lease fleet vehicles through the Enterprise Fleet Management (Enterprise) program as an additional method of procuring vehicles for the City fleet. The Enterprise program provides the City a rotation of vehicles that would have current safety features and be more fuel efficient as opposed to owning vehicles for an extended time frame.</p> <p>The proposed initial schedule replaces 29 vehicles over a five-year time frame and would save the City approximately \$253,000 over ten years. At least twice per year Enterprise will analyze vehicle depreciation, fuel cost, and maintenance costs to determine and recommend the optimal time of vehicle replacement.</p> <p>A Master Equity Lease Agreement will be signed, which allows the City to lease vehicles through Enterprise Fleet Management. Each leased vehicle will have a separate lease and lease term that will serve as an addendum to the master lease agreement.</p> <p>Startup cost and annual lease payment is due the month after the vehicles are received. Annual fleet leasing costs will be paid from the approved Fleet Division budget. Delivery of the 2021 vehicle order is expected to take about 30 weeks.</p>	

RECOMMENDED MOTION:

Staff recommends that Council authorize the Mayor to sign and execute the Master Equity Lease Agreement with Enterprise Fleet Services.



MASTER EQUITY LEASE AGREEMENT

This Master Equity Lease Agreement is entered into this _____ day of _____, by and between Enterprise FM Trust, a Delaware statutory trust ("Lessor"), and the lessee whose name and address is set forth on the signature page below ("Lessee").

1. LEASE OF VEHICLES: Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the vehicles (individually, a "Vehicle" and collectively, the "Vehicles") described in the schedules from time to time delivered by Lessor to Lessee as set forth below ("Schedule(s)") for the rentals and on the terms set forth in this Agreement and in the applicable Schedule. References to this "Agreement" shall include this Master Equity Lease Agreement and the various Schedules and addenda to this Master Equity Lease Agreement. Lessor will, on or about the date of delivery of each Vehicle to Lessee, send Lessee a Schedule covering the Vehicle, which will include, among other things, a description of the Vehicle, the lease term and the monthly rental and other payments due with respect to the Vehicle. The terms contained in each such Schedule will be binding on Lessee unless Lessee objects in writing to such Schedule within ten (10) days after the date of delivery of the Vehicle covered by such Schedule. Lessor is the sole legal owner of each Vehicle. This Agreement is a lease only and Lessee will have no right, title or interest in or to the Vehicles except for the use of the Vehicles as described in this Agreement. This Agreement shall be treated as a true lease for federal and applicable state income tax purposes with Lessor having all benefits of ownership of the Vehicles. It is understood and agreed that Enterprise Fleet Management, Inc. or an affiliate thereof (together with any subdivider, agent, successor or assign as servicer on behalf of Lessor, "Servicer") may administer this Agreement on behalf of Lessor and may perform the service functions herein provided to be performed by Lessor.

2. TERM: The term of this Agreement ("Term") for each Vehicle begins on the date such Vehicle is delivered to Lessee (the "Delivery Date") and, unless terminated earlier in accordance with the terms of this Agreement, continues for the "Lease Term" as described in the applicable Schedule.

3. RENT AND OTHER CHARGES:

(a) Lessee agrees to pay Lessor monthly rental and other payments according to the Schedules and this Agreement. The monthly payments will be in the amount listed as the "Total Monthly Rental Including Additional Services" on the applicable Schedule (with any portion of such amount identified as a charge for maintenance services under Section 4 of the applicable Schedule being payable to Lessor as agent for Enterprise Fleet Management, Inc.) and will be due and payable in advance on the first day of each month. If a Vehicle is delivered to Lessee on any day other than the first day of a month, monthly rental payments will begin on the first day of the next month. In addition to the monthly rental payments, Lessee agrees to pay Lessor a pro-rated rental charge for the number of days that the Delivery Date precedes the first monthly rental payment date. A portion of each monthly rental payment, being the amount designated as "Depreciation Reserve" on the applicable Schedule, will be considered as a reserve for depreciation and will be credited against the Delivered Price of the Vehicle for purposes of computing the Book Value of the Vehicle under Section 3(c). Lessee agrees to pay Lessor the "Total Initial Charges" set forth in each Schedule on the due date of the first monthly rental payment under such Schedule. Lessee agrees to pay Lessor the "Service Charge Due at Lease Termination" set forth in each Schedule at the end of the applicable Term (whether by reason of expiration, early termination or otherwise).

(b) In the event the Term for any Vehicle ends prior to the last day of the scheduled Term, whether as a result of a default by Lessee, a Casualty Occurrence or any other reason, the rentals and management fees paid by Lessee will be recalculated in accordance with the rule of 78's and the adjusted amount will be payable by Lessee to Lessor on the termination date.

(c) Lessee agrees to pay Lessor within thirty (30) days after the end of the Term for each Vehicle, additional rent equal to the excess, if any, of the Book Value of such Vehicle over the greater of (i) the wholesale value of such Vehicle as determined by Lessor in good faith or (ii) except as provided below, twenty percent (20%) of the Delivered Price of such Vehicle as set forth in the applicable Schedule. If the Book Value of such Vehicle is less than the greater of (i) the wholesale value of such Vehicle as determined by Lessor in good faith or (ii) except as provided below, twenty percent (20%) of the Delivered Price of such Vehicle as set forth in the applicable Schedule, Lessor agrees to pay such deficiency to Lessee as a terminal rental adjustment within thirty (30) days after the end of the applicable Term. Notwithstanding the foregoing, if (i) the Term for a Vehicle is greater than forty-eight (48) months (including any extension of the Term for such Vehicle), (ii) the mileage on a Vehicle at the end of the Term is greater than 15,000 miles per year on average (prorated on a daily basis) (i.e., if the mileage on a Vehicle with a Term of thirty-six (36) months is greater than 45,000 miles) or (iii) in the sole judgment of Lessor, a Vehicle has been subject to damage or any abnormal or excessive wear and tear, the calculations described in the two immediately preceding sentences shall be made without giving effect to clause (ii) in each such sentence. The "Book Value" of a Vehicle means the sum of (i) the "Delivered Price" of the Vehicle as set forth in the applicable Schedule minus (ii) the total Depreciation Reserve paid by Lessee to Lessor with respect to such Vehicle plus (iii) all accrued and unpaid rent and/or other amounts owed by Lessee with respect to such Vehicle.

(d) Any security deposit of Lessee will be returned to Lessee at the end of the applicable Term, except that the deposit will first be applied to any losses and/or damages suffered by Lessor as a result of Lessee's breach of or default under this Agreement and/or to any other amounts then owed by Lessee to Lessor.

(e) Any rental payment or other amount owed by Lessee to Lessor which is not paid within twenty (20) days after its due date will accrue interest, payable on demand of Lessor, from the date due until paid in full at a rate per annum equal to the lesser of (i) Eighteen Percent (18%) per annum or (ii) the highest rate permitted by applicable law (the "Default Rate").

(f) If Lessee fails to pay any amount due under this Agreement or to comply with any of the covenants contained in this Agreement, Lessor, Servicer or any other agent of Lessor may, at its option, pay such amounts or perform such covenants and all sums paid or incurred by Lessor in connection therewith will be repayable by Lessee to Lessor upon demand together with interest thereon at the Default Rate.

Initials: EFM _____ Customer _____

(g) Lessee's obligations to make all payments of rent and other amounts under this Agreement are absolute and unconditional and such payments shall be made in immediately available funds without setoff, counterclaim or deduction of any kind. Lessee acknowledges and agrees that neither any Casualty Occurrence to any Vehicle nor any defect, unfitness or lack of governmental approval in, of, or with respect to, any Vehicle regardless of the cause or consequence nor any breach by Enterprise Fleet Management, Inc. of any maintenance agreement between Enterprise Fleet Management, Inc. and Lessee covering any Vehicle regardless of the cause or consequence will relieve Lessee from the performance of any of its obligations under this Agreement, including, without limitation, the payment of rent and other amounts under this Agreement.

4. USE AND SURRENDER OF VEHICLES: Lessee agrees to allow only duly authorized, licensed and insured drivers to use and operate the Vehicles. Lessee agrees to comply with, and cause its drivers to comply with, all laws, statutes, rules, regulations and ordinances and the provisions of all insurance policies affecting or covering the Vehicles or their use or operation. Lessee agrees to keep the Vehicles free of all liens, charges and encumbrances. Lessee agrees that in no event will any Vehicle be used or operated for transporting hazardous substances or persons for hire, for any illegal purpose or to pull trailers that exceed the manufacturer's trailer towing recommendations. Lessee agrees that no Vehicle is intended to be or will be utilized as a "school bus" as defined in the Code of Federal Regulations or any applicable state or municipal statute or regulation. Lessee agrees not to remove any Vehicle from the continental United States without first obtaining Lessor's written consent. At the expiration or earlier termination of this Agreement with respect to each Vehicle, or upon demand by Lessor made pursuant to Section 14, Lessee at its risk and expense agrees to return such Vehicle to Lessor at such place and by such reasonable means as may be designated by Lessor. If for any reason Lessee fails to return any Vehicle to Lessor as and when required in accordance with this Section, Lessee agrees to pay Lessor additional rent for such Vehicle at twice the normal pro-rated daily rent. Acceptance of such additional rent by Lessor will in no way limit Lessor's remedies with respect to Lessee's failure to return any Vehicle as required hereunder.

5. COSTS, EXPENSES, FEES AND CHARGES: Lessee agrees to pay all costs, expenses, fees, charges, fines, tickets, penalties and taxes (other than federal and state income taxes on the income of Lessor) incurred in connection with the titling, registration, delivery, purchase, sale, rental, use or operation of the Vehicles during the Term. If Lessor, Servicer or any other agent of Lessor incurs any such costs or expenses, Lessee agrees to promptly reimburse Lessor for the same.

6. LICENSE AND CHARGES: Each Vehicle will be titled and licensed in the name designated by Lessor at Lessee's expense. Certain other charges relating to the acquisition of each Vehicle and paid or satisfied by Lessor have been capitalized in determining the monthly rental, treated as an initial charge or otherwise charged to Lessee. Such charges have been determined without reduction for trade-in, exchange allowance or other credit attributable to any Lessor-owned vehicle.

7. REGISTRATION PLATES, ETC.: Lessee agrees, at its expense, to obtain in the name designated by Lessor all registration plates and other plates, permits, inspections and/or licenses required in connection with the Vehicles, except for the initial registration plates which Lessor will obtain at Lessee's expense. The parties agree to cooperate and to furnish any and all information or documentation, which may be reasonably necessary for compliance with the provisions of this Section or any federal, state or local law, rule, regulation or ordinance. Lessee agrees that it will not permit any Vehicle to be located in a state other than the state in which such Vehicle is then titled for any continuous period of time that would require such Vehicle to become subject to the titling and/or registration laws of such other state.

8. MAINTENANCE OF AND IMPROVEMENTS TO VEHICLES:

(a) Lessee agrees, at its expense, to (i) maintain the Vehicles in good condition, repair, maintenance and running order and in accordance with all manufacturer's instructions and warranty requirements and all legal requirements and (ii) furnish all labor, materials, parts and other essentials required for the proper operation and maintenance of the Vehicles. Any alterations, additions, replacement parts or improvements to a Vehicle will become and remain the property of Lessor and will be returned with such Vehicle upon such Vehicle's return pursuant to Section 4. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Lessee shall have the right to remove any additional equipment installed by Lessee on a Vehicle prior to returning such Vehicle to Lessor under Section 4. The value of such alterations, additions, replacement parts and improvements will in no instance be regarded as rent. Without the prior written consent of Lessor, Lessee will not make any alterations, additions, replacement parts or improvements to any Vehicle which detract from its economic value or functional utility. Lessor will not be required to make any repairs or replacements of any nature or description with respect to any Vehicle, to maintain or repair any Vehicle or to make any expenditure whatsoever in connection with any Vehicle or this Agreement.

(b) Lessor and Lessee acknowledge and agree that if Section 4 of a Schedule includes a charge for maintenance, (i) the Vehicle(s) covered by such Schedule are subject to a separate maintenance agreement between Enterprise Fleet Management, Inc. and Lessee and (ii) Lessor shall have no liability or responsibility for any failure of Enterprise Fleet Management, Inc. to perform any of its obligations thereunder or to pay or reimburse Lessee for its payment of any costs and expenses incurred in connection with the maintenance or repair of any such Vehicle(s).

9. SELECTION OF VEHICLES AND DISCLAIMER OF WARRANTIES:

(a) LESSEE ACCEPTANCE OF DELIVERY AND USE OF EACH VEHICLE WILL CONCLUSIVELY ESTABLISH THAT SUCH VEHICLE IS OF A SIZE, DESIGN, CAPACITY, TYPE AND MANUFACTURE SELECTED BY LESSEE AND THAT SUCH VEHICLE IS IN GOOD CONDITION AND REPAIR AND IS SATISFACTORY IN ALL RESPECTS AND IS SUITABLE FOR LESSEE'S PURPOSE. LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OF ANY VEHICLE OR AN AGENT OF A MANUFACTURER OF ANY VEHICLE.

(b) LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY VEHICLE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. THE VEHICLES ARE LEASED "AS IS," "WITH ALL FAULTS." All warranties made by any supplier, vendor and/or manufacturer of a Vehicle are hereby assigned by Lessor to Lessee for the applicable Term and Lessee's only remedy, if any, is against the supplier, vendor or manufacturer of the Vehicle.

(c) None of Lessor, Servicer or any other agent of Lessor will be liable to Lessee for any liability, claim, loss, damage (direct, incidental or consequential) or expense of any kind or nature, caused directly or indirectly, by any Vehicle or any inadequacy of any Vehicle for any purpose or any defect (latent or patent) in any Vehicle or the use or maintenance of any Vehicle or any repair, servicing or adjustment of or to any Vehicle, or any delay in providing or failure to provide any Vehicle, or any interruption or loss of service or use of any Vehicle, or any loss of business or any damage whatsoever and however caused. In addition, none of Lessor, Servicer or any other agent of Lessor will have any liability to Lessee under this Agreement or under any order authorization form executed by Lessee if Lessor is unable to locate or purchase a Vehicle ordered by Lessee or for any delay in delivery of any Vehicle ordered by Lessee.

10. RISK OF LOSS: Lessee assumes and agrees to bear the entire risk of loss of, theft of, damage to or destruction of any Vehicle from any cause whatsoever ("Casualty Occurrence"). In the event of a Casualty Occurrence to a Vehicle, Lessee shall give Lessor prompt notice of the Casualty Occurrence and thereafter will place the applicable Vehicle in good repair, condition and working order; provided, however, that if the applicable Vehicle is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair (a "Totaled Vehicle"), Lessee agrees to pay Lessor no later than the date thirty (30) days after the date of the Casualty Occurrence the amounts owed under Sections 3(b) and 3(c) with respect to such Totaled Vehicle. Upon such payment, this Agreement will terminate with respect to such Totaled Vehicle.

11. INSURANCE:

(a) Lessee agrees to purchase and maintain in force during the Term, insurance policies in at least the amounts listed below covering each Vehicle, to be written by an insurance company or companies satisfactory to Lessor, insuring Lessee, Lessor and any other person or entity designated by Lessor against any damage, claim, suit, action or liability:

(i) Commercial Automobile Liability Insurance (including Uninsured/Underinsured Motorist Coverage and No-Fault Protection where required by law) for the limits listed below (Note - \$2,000,000 Combined Single Limit Bodily Injury and Property Damage with No Deductible is required for each Vehicle capable of transporting more than 8 passengers):

<u>State of Vehicle Registration</u>	<u>Coverage</u>
Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont	\$1,000,000 Combined Single Limit Bodily Injury and Property Damage - No Deductible
Florida	\$500,000 Combined Single Limit Bodily Injury and Property Damage or \$100,000 Bodily Injury Per Person, \$300,000 Per Occurrence and \$50,000 Property Damage (100/300/50) - No Deductible
All Other States	\$300,000 Combined Single Limit Bodily Injury and Property Damage or \$100,000 Bodily Injury Per Person, \$300,000 Per Occurrence and \$50,000 Property Damage (100/300/50) - No Deductible

(ii) Physical Damage Insurance (Collision & Comprehensive): Actual cash value of the applicable Vehicle. Maximum deductible of \$500 per occurrence - Collision and \$250 per occurrence - Comprehensive).

If the requirements of any governmental or regulatory agency exceed the minimums stated in this Agreement, Lessee must obtain and maintain the higher insurance requirements. Lessee agrees that each required policy of insurance will by appropriate endorsement or otherwise name Lessor and any other person or entity designated by Lessor as additional insureds and loss payees, as their respective interests may appear. Further, each such insurance policy must provide the following: (i) that the same may not be cancelled, changed or modified until after the insurer has given to Lessor, Servicer and any other person or entity designated by Lessor at least thirty (30) days prior written notice of such proposed cancellation, change or modification, (ii) that no act or default of Lessee or any other person or entity shall affect the right of Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns to recover under such policy or policies of insurance in the event of any loss of or damage to any Vehicle and (iii) that the coverage is "primary coverage" for the protection of Lessee, Lessor, Servicer, any other agent of Lessor and their respective successors and assigns notwithstanding any other coverage carried by Lessee, Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns protecting against similar risks. Original certificates evidencing such coverage and naming Lessor, Servicer, any other agent of Lessor and any other person or entity designated by Lessor as additional insureds and loss payees shall be furnished to Lessor prior to the Delivery Date, and annually thereafter and/or as reasonably requested by Lessor from time to time. In the event of default, Lessee hereby appoints Lessor, Servicer and any other agent of Lessor as Lessee's attorney-in-fact to receive payment of, to endorse all checks and other documents and to take any other actions necessary to pursue insurance claims and recover payments if Lessee fails to do so. Any expense of Lessor, Servicer or any other agent of Lessor in adjusting or collecting insurance shall be borne by Lessee.

Lessee, its drivers, servants and agents agree to cooperate fully with Lessor, Servicer, any other agent of Lessor and any insurance carriers in the investigation, defense and prosecution of all claims or suits arising from the use or operation of any Vehicle. If any claim is made or action commenced for death, personal injury or property damage resulting from the ownership, maintenance, use or operation of any Vehicle, Lessee will promptly notify Lessor of such action or claim and forward to Lessor a copy of every demand, notice, summons or other process received in connection with such claim or action.

(b) Notwithstanding the provisions of Section 11(a) above: (i) if Section 4 of a Schedule includes a charge for physical damage waiver, Lessor agrees that (A) Lessee will not be required to obtain or maintain the minimum physical damage insurance (collision and comprehensive) required under Section 11(a) for the Vehicle(s) covered by such Schedule and (B) Lessor will assume the risk of physical damage (collision and comprehensive) to the Vehicle(s) covered by such Schedule; provided, however, that such physical damage waiver shall not apply to, and Lessee shall be and remain liable and responsible for, damage to a covered Vehicle caused by wear and tear or mechanical breakdown or failure, damage to or loss of any parts, accessories or components added to a covered

Initials: EFM_____ Customer_____

Vehicle by Lessee without the prior written consent of Lessor and/or damage to or loss of any property and/or personal effects contained in a covered Vehicle. In the event of a Casualty Occurrence to a covered Vehicle, Lessor may, at its option, replace, rather than repair, the damaged Vehicle with an equivalent vehicle, which replacement vehicle will then constitute the "Vehicle" for purposes of this Agreement; and (ii) if Section 4 of a Schedule includes a charge for commercial automobile liability enrollment, Lessor agrees that it will, at its expense, obtain for and on behalf of Lessee, by adding Lessee as an additional insured under a commercial automobile liability insurance policy issued by an insurance company selected by Lessor, commercial automobile liability insurance satisfying the minimum commercial automobile liability insurance required under Section 11(a) for the Vehicle(s) covered by such Schedule. Lessor may at any time during the applicable Term terminate said obligation to provide physical damage waiver and/or commercial automobile liability enrollment and cancel such physical damage waiver and/or commercial automobile liability enrollment upon giving Lessee at least ten (10) days prior written notice. Upon such cancellation, insurance in the minimum amounts as set forth in 11(a) shall be obtained and maintained by Lessee at Lessee's expense. An adjustment will be made in monthly rental charges payable by Lessee to reflect any such change and Lessee agrees to furnish Lessor with satisfactory proof of insurance coverage within ten (10) days after mailing of the notice. In addition, Lessor may change the rates charged by Lessor under this Section 11(b) for physical damage waiver and/or commercial automobile liability enrollment upon giving Lessee at least thirty (30) days prior written notice.

12. INDEMNITY: To the extent permitted by state law, Lessee agrees to defend and indemnify Lessor, Servicer, any other agent of Lessor and their respective successors and assigns from and against any and all losses, damages, liabilities, suits, claims, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) which Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns may incur by reason of Lessee's breach or violation of, or failure to observe or perform, any term, provision or covenant of this Agreement, or as a result of any loss, damage, theft or destruction of any Vehicle or related to or arising out of or in connection with the use, operation or condition of any Vehicle. The provisions of this Section 12 shall survive any expiration or termination of this Agreement. Nothing herein shall be deemed to affect the rights, privileges, and immunities of Lessee and the foregoing indemnity provision is not intended to be a waiver of any sovereign immunity afforded to Lessee pursuant to the law.

13. INSPECTION OF VEHICLES; ODOMETER DISCLOSURE; FINANCIAL STATEMENTS: Lessee agrees to accomplish, at its expense, all inspections of the Vehicles required by any governmental authority during the Term. Lessor, Servicer, any other agent of Lessor and any of their respective successors or assigns will have the right to inspect any Vehicle at any reasonable time(s) during the Term and for this purpose to enter into or upon any building or place where any Vehicle is located. Lessee agrees to comply with all odometer disclosure laws, rules and regulations and to provide such written and signed disclosure information on such forms and in such manner as directed by Lessor. Providing false information or failure to complete the odometer disclosure form as required by law may result in fines and/or imprisonment. Lessee hereby agrees to promptly deliver to Lessor such financial statements and other financial information regarding Lessee as Lessor may from time to time reasonably request.

14. DEFAULT; REMEDIES: The following shall constitute events of default ("Events of Default") by Lessee under this Agreement: (a) if Lessee fails to pay when due any rent or other amount due under this Agreement and any such failure shall remain unremedied for ten (10) days; (b) if Lessee fails to perform, keep or observe any term, provision or covenant contained in Section 11 of this Agreement; (c) if Lessee fails to perform, keep or observe any other term, provision or covenant contained in this Agreement and any such failure shall remain unremedied for thirty (30) days after written notice thereof is given by Lessor, Servicer or any other agent of Lessor to Lessee; (d) any seizure or confiscation of any Vehicle or any other act (other than a Casualty Occurrence) otherwise rendering any Vehicle unsuitable for use (as determined by Lessor); (e) if any present or future guaranty in favor of Lessor of all or any portion of the obligations of Lessee under this Agreement shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void by a court of competent jurisdiction, or if the validity or enforceability of any such guaranty shall be contested or denied by any guarantor, or if any guarantor shall deny that it, he or she has any further liability or obligation under any such guaranty or if any guarantor shall fail to comply with or observe any of the terms, provisions or conditions contained in any such guaranty; (f) the occurrence of a material adverse change in the financial condition or business of Lessee or any guarantor; or (g) if Lessee or any guarantor is in default under or fails to comply with any other present or future agreement with or in favor of Lessor, The Crawford Group, Inc. or any direct or indirect subsidiary of The Crawford Group, Inc.. For purposes of this Section 14, the term "guarantor" shall mean any present or future guarantor of all or any portion of the obligations of Lessee under this Agreement.

Upon the occurrence of any Event of Default, Lessor, without notice to Lessee, will have the right to exercise concurrently or separately (and without any election of remedies being deemed made), the following remedies: (a) Lessor may demand and receive immediate possession of any or all of the Vehicles from Lessee, without releasing Lessee from its obligations under this Agreement; if Lessee fails to surrender possession of the Vehicles to Lessor on default (or termination or expiration of the Term), Lessor, Servicer, any other agent of Lessor and any of Lessor's independent contractors shall have the right to enter upon any premises where the Vehicles may be located and to remove and repossess the Vehicles; (b) Lessor may enforce performance by Lessee of its obligations under this Agreement; (c) Lessor may recover damages and expenses sustained by Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns by reason of Lessee's default including, to the extent permitted by applicable law, all costs and expenses, including court costs and reasonable attorneys' fees and expenses, incurred by Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns in attempting or effecting enforcement of Lessor's rights under this Agreement (whether or not litigation is commenced) and/or in connection with bankruptcy or insolvency proceedings; (d) upon written notice to Lessee, Lessor may terminate Lessee's rights under this Agreement; (e) with respect to each Vehicle, Lessor may recover from Lessee all amounts owed by Lessee under Sections 3(b) and 3(c) of this Agreement (and, if Lessor does not recover possession of a Vehicle, (i) the estimated wholesale value of such Vehicle for purposes of Section 3(c) shall be deemed to be \$0.00 and (ii) the calculations described in the first two sentences of Section 3(c) shall be made without giving effect to clause (ii) in each such sentence); and/or (f) Lessor may exercise any other right or remedy which may be available to Lessor under the Uniform Commercial Code, any other applicable law or in equity. A termination of this Agreement shall occur only upon written notice by Lessor to Lessee. Any termination shall not affect Lessee's obligation to pay all amounts due for periods prior to the effective date of such termination or Lessee's obligation to pay any indemnities under this Agreement. All remedies of Lessor under this Agreement or at law or in equity are cumulative.

15. ASSIGNMENTS: Lessor may from time to time assign, pledge or transfer this Agreement and/or any or all of its rights and obligations under this Agreement to any person or entity. Lessee agrees, upon notice of any such assignment, pledge or transfer of any amounts due or to become due to Lessor under this Agreement to pay all such amounts to such assignee, pledgee or transferee. Any such assignee, pledgee or transferee of any rights or obligations of Lessor under this Agreement will have all of the rights and obligations that have been assigned to it. Lessee's rights and interest in and to the Vehicles are and will continue

Initials: EFM _____ Customer _____

at all times to be subject and subordinate in all respects to any assignment, pledge or transfer now or hereafter executed by Lessor with or in favor of any such assignee, pledgee or transferee, provided that Lessee shall have the right of quiet enjoyment of the Vehicles so long as no Event of Default under this Agreement has occurred and is continuing. Lessee acknowledges and agrees that the rights of any assignee, pledgee or transferee in and to any amounts payable by the Lessee under any provisions of this Agreement shall be absolute and unconditional and shall not be subject to any abatement whatsoever, or to any defense, setoff, counterclaim or recoupment whatsoever, whether by reason of any damage to or loss or destruction of any Vehicle or by reason of any defect in or failure of title of the Lessor or interruption from whatsoever cause in the use, operation or possession of any Vehicle, or by reason of any indebtedness or liability howsoever and whenever arising of the Lessor or any of its affiliates to the Lessee or to any other person or entity, or for any other reason.

Without the prior written consent of Lessor, Lessee may not assign, sublease, transfer or pledge this Agreement, any Vehicle, or any interest in this Agreement or in and to any Vehicle, or permit its rights under this Agreement or any Vehicle to be subject to any lien, charge or encumbrance. Lessee's interest in this Agreement is not assignable and cannot be assigned or transferred by operation of law. Lessee will not transfer or relinquish possession of any Vehicle (except for the sole purpose of repair or service of such Vehicle) without the prior written consent of Lessor.

16. MISCELLANEOUS: This Agreement contains the entire understanding of the parties. This Agreement may only be amended or modified by an instrument in writing executed by both parties. Lessor shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Agreement and no waiver whatsoever shall be valid unless in writing and signed by Lessor and then only to the extent therein set forth. A waiver by Lessor of any right or remedy under this Agreement on any one occasion shall not be construed as a bar to any right or remedy, which Lessor would otherwise have on any future occasion. If any term or provision of this Agreement or any application of any such term or provision is invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision will not be affected thereby. Giving of all notices under this Agreement will be sufficient if mailed by certified mail to a party at its address set forth below or at such other address as such party may provide in writing from time to time. Any such notice mailed to such address will be effective one (1) day after deposit in the United States mail, duly addressed, with certified mail, postage prepaid. Lessee will promptly notify Lessor of any change in Lessee's address. This Agreement may be executed in multiple counterparts (including facsimile and pdf counterparts), but the counterpart marked "ORIGINAL" by Lessor will be the original lease for purposes of applicable law. All of the representations, warranties, covenants, agreements and obligations of each Lessee under this Agreement (if more than one) are joint and several.

17. SUCCESSORS AND ASSIGNS; GOVERNING LAW: Subject to the provisions of Section 15, this Agreement will be binding upon Lessee and its heirs, executors, personal representatives, successors and assigns, and will inure to the benefit of Lessor, Servicer, any other agent of Lessor and their respective successors and assigns. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Missouri (determined without reference to conflict of law principles).

18. NON-PETITION: Each party hereto hereby covenants and agrees that, prior to the date which is one year and one day after payment in full of all indebtedness of Lessor, it shall not institute against, or join any other person in instituting against, Lessor any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceeding under the laws of the United States or any state of the United States. The provisions of this Section 18 shall survive termination of this Master Equity Lease Agreement.

19. NON-APPROPRIATION: Lessee's funding of this Agreement shall be on a Fiscal Year basis and is subject to annual appropriations. Lessor acknowledges that Lessee is a municipal corporation, is precluded by the County or State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the County or State to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that the lease terms within this Agreement or any Schedules relating hereto are contingent upon appropriation of funds. The parties further agree that should the County or State fail to appropriate such funds, the Lessor shall be paid all rentals due and owing hereunder up until the actual day of termination. In addition, Lessor reserves the right to be paid for any reasonable damages. These reasonable damages will be limited to the losses incurred by the Lessor for having to sell the vehicles on the open used car market prior to the end of the scheduled term (as determined in Section 3 and Section 14 of this Agreement).

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Master Equity Lease Agreement as of the day and year first above written.

LESSEE: City of Marysville
 Signature: _____
 By: _____
 Title: _____
 Address: 1049 State Ave, # 101
Marysville, WA 98270

 Date Signed: _____, _____

LESSOR: Enterprise FM Trust
 By: Enterprise Fleet Management, Inc. its attorney in fact
 Signature: _____
 By: Brock Griffith
 Title: Finance Manager
 Address: 500 Naches Ave SW
Renton, WA 98057

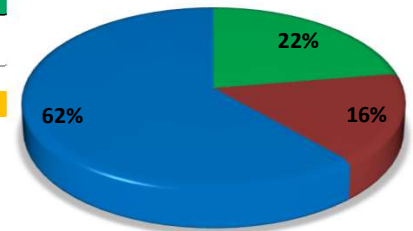
 Date Signed: _____, _____

Initials: EFM_____ Customer_____

City of Marysville - Fleet Planning Analysis

Current Fleet	29	Fleet Growth	0.00%	Proposed Fleet	29
Current Cycle	8.61	Annual Miles	4,100	Proposed Cycle	5.00
Current Maint.	\$73.33	Current MPG	10	Proposed Maint.	\$21.98
Maint. Cents Per Mile	\$0.22			Price/Gallon	\$3.00

Fleet Costs Analysis



Fiscal Year	Fleet Mix			Fleet Cost						Annual		
	Fleet Size	Annual Needs	Owned	Leased	Purchase	Lease*	Equity (Owned)*	Equity (Leased)	Maintenance	Fuel	Fleet Budget	Net Cash
Average	29	3.6	29	0	97,977	0			25,519	35,670	159,166	0
'21	29	10	19	10	0	72,814	10,000		19,357	31,058	133,228	25,938
'22	29	0	19	10	0	72,814	0		19,357	31,058	123,228	35,938
'23	29	1	18	11	0	77,974	-3,000		18,740	30,596	124,311	34,855
'24	29	6	12	17	0	108,934	-21,000		15,043	27,829	130,806	28,360
'25	29	12	0	29	0	170,854	-78,000	-76,088	7,649	22,294	46,708	112,457
'26	29	10	0	29	0	170,854		0	7,649	22,294	200,796	-41,631
'27	29	0	0	29	0	170,854		-12,173	7,649	22,294	188,624	-29,458
'28	29	1	0	29	0	170,854		-59,991	7,649	22,294	140,805	18,361
'29	29	6	0	29	0	170,854		-75,399	7,649	22,294	125,397	33,769
'30	29	12	0	29	0	170,854		-76,088	7,649	22,294	124,708	34,457

10 Year Savings	\$253,046	Avg. Sustainable Savings	\$3,100
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***Equity Owned in Year 2022 is the Sum of \$10K in current fleet equity + \$20K in Year 1 Down Payments.**

*** Lease Rates are conservative estimates for Years 202, 2024 and 2025**
****Estimated Current Fleet Equity is based on the current fleet "sight unseen" and can be adjusted after physical inspection**
Lease Maintenance costs are exclusive of tires unless noted on the lease rate quote.

KEY OBJECTIVES

Lower average age of the fleet

34% of the current light and medium duty fleet is over 10 years old
 Resale of the aging fleet is significantly reduced

Reduce operating costs

Newer vehicles have a significantly lower maintenance expense
 Newer vehicles have increased fuel efficiency with new technology implementations

Maintain a manageable vehicle budget


Challenged by inconsistent yearly budgets
 Currently vehicle budget is underfunded



CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: November 08, 2021

AGENDA ITEM:	
Professional Services Agreement with MacLeod Reckord for preliminary design of the Marysville to Lake Stevens Connector Trail	
PREPARED BY:	DIRECTOR APPROVAL:
Steven Miller, Senior Project Manager	
DEPARTMENT:	
Engineering and Transportation Services	
ATTACHMENTS:	
Contract Exhibit A-1 - Scope of Work and Fee Determination	
BUDGET CODE:	AMOUNT:
31000076.563000	\$495,460.19
SUMMARY:	
<p>In July 2019, the City council approved an interlocal agreement (ILA) with Lake Stevens to develop and construct a trail linking Marysville and Lake Stevens, to better serve both communities and to offer non-motorized transportation options for recreation and health benefits. The project area is aligned along powerline corridors that feature open space suitable for a trail. The proposed trail extends from 64th ST NE (SR 528) in Marysville at the north end, to 8th ST SE in Lake Stevens at the south end.</p> <p>Since the ILA was approved, the City has obtained a grant from the State Department of Commerce in the amount of \$504,700 to fund preliminary design of the project. The City advertised a request for proposals in July. A panel consisting of City staff and (1) staff member from Lake Stevens interviewed MacLeod Reckord (M-R) and Otak. M-R was selected as the preferred candidate. The attached Professional Service Agreement was negotiated with M-R to provide preliminary design necessary for the project. Staff opinion is that the negotiated fee of \$495,460.19 is fair and consistent with industry standard.</p> <p>This phase will be administered by the City with the use of grant funds, and will include coordination with Lake Stevens in accordance with the ILA. Additional phases to complete the project will be completed in accordance with the ILA, including cost-sharing and other applicable provisions.</p>	

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign and execute a Professional Services Agreement (PSA) between the City of Marysville and MacLeod Reckord PLLC, in the amount of \$495,460.19.

RECOMMENDED MOTION:

I move to authorize the Mayor to sign and execute the PSA with MacLeod Reckord.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF MARYSVILLE
AND MACLEOD RECKORD, PLLC**

THIS AGREEMENT (“Agreement”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (“City”), and MacLeod Reckord, PLLC, a professional limited liability corporation, organized under the laws of the state of Washington, located and doing business at 110 Prefontaine Place South, Suite 600, Seattle, WA 98104 (“Consultant”).

In consideration of the terms, conditions, covenants, and performances contained herein, the parties hereto agree as follows:

- 1. SCOPE OF SERVICES.** The Consultant shall provide the work and services described in the attached **EXHIBIT A**, incorporated herein by this reference (the “Services”). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant’s profession.
- 2. TERM.** The term of this Agreement shall commence on _____ and shall terminate at midnight on 12/31/2023. The parties may extend the term of this Agreement by executing a written supplemental amendment.
- 3. COMPENSATION.** The Consultant shall be paid by the City for Services rendered under this Agreement as described in **EXHIBIT A** and as provided in this section. In no event shall the compensation paid to Consultant under this Agreement exceed **Four Hundred-Ninety-Five Thousand and Four Hundred-Sixty Dollars and Nineteen Cents (\$495,460.19)** within the term of the Agreement, including extensions, without the written agreement of the Consultant and the City. Such payment shall be full compensation for the Services and for all labor, materials, supplies, equipment, incidentals, and any other expenses necessary for completion.

The Consultant shall submit a monthly invoice to the City for Services performed in the previous calendar month in a format acceptable to the City. The Consultant shall maintain time and expense records and provide them to the City upon request.

The City will pay timely submitted and approved invoices received before the 20th of each month within thirty (30) days of receipt.

4. CONSULTANT’S OBLIGATIONS.

4.1 MINOR CHANGES IN SCOPE. The Consultant agrees to accept minor changes, amendments, or revisions to the scope of the Services, as may be required by the City, when such

changes, amendments, or revisions will not have any impact on the cost of the Services or the proposed delivery schedule.

4.2 ADDITIONAL WORK. The City may desire to have the Consultant perform additional work or services which are not identified in the scope of the Services. If the parties agree to the performance of additional work or services, the parties will execute a written supplemental amendment detailing the additional work or services and compensation therefore. In no event will the Consultant be compensated for preparing proposals for additional work or services. In no event shall the Consultant begin work contemplated under a supplemental amendment until the supplemental amendment is fully executed by the parties.

4.3 WORK PRODUCT AND DOCUMENTS. The work product and all documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the Services shall become the property of the City, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the Services, the work product, and all documents produced under this Agreement, even though the Services have been accepted by the City.

In the event that the Consultant defaults on this Agreement or in the event that this Agreement is terminated prior to the completion of the Services or the time for completion, all work product and all documents and other materials produced under this Agreement, along with a summary of work as of the date of default or termination, shall become the property of the City. The summary of Services provided shall be prepared at no additional cost to the City. Upon request, the Consultant shall tender the work product, all documents, and the summary to the City within five (5) business days. Tender of said work product shall be a prerequisite to final payment under this Agreement.

The Consultant will not be held liable for reuse of work product or documents produced under this Agreement or modification of the work product or documents for any purpose other than those identified in this Agreement without the written authorization of the Consultant.

4.4 PUBLIC RECORDS ACT. Consultant acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "PRA"). All records owned, used, or retained by the City are public records subject to disclosure unless exempt under the PRA, whether or not the records are in the possession or control of the City or Consultant. All exemptions to the PRA are narrowly construed.

a. **Confidential Information.** Any records provided to the City by the Consultant which contain information that the Consultant in good faith believes is not subject to disclosure under the PRA shall be marked "Confidential" and shall identify the specific information that the Consultant in good faith believes is not subject to disclosure under the PRA and a citation to the statutory basis for non-disclosure.

b. **Responding to Public Records Requests.** The City shall exercise its sole legal judgment in responding to public records requests.

- (1) The City may rely upon the lack of notification from the Consultant in releasing any records that are not marked “Confidential.”
- (2) If records identified as “Confidential” by the Consultant are responsive to a PRA request, the City will seek to provide notice to Consultant at least ten (10) business days before the date on which the City anticipates releasing records. The City is under no obligation to assert any applicable exemption on behalf of the Consultant. The Consultant may seek, at its sole cost, an injunction preventing the release of information which it believes is protected. In no event will the City have any liability to Consultant for any failure of the City to provide notice prior to release.
- (3) If the City, in its sole legal judgment, believes that the Consultant possesses records that (1) are responsive to a PRA request and (2) were used by the City, the City will request the records from the Consultant. The Consultant will, within ten (10) business days:
 - i. Provide the records to the City in the manner requested by the City;
 - ii. Obtain a court injunction, in a lawsuit involving the requester, covering all, or any confidential portion of, the records and provide any records not subject to the court injunction; or
 - iii. Provide an affidavit, in a form acceptable to the City Attorney, specifying that the Consultant has made a diligent search and did not locate any requested documents.

c. **Indemnification.** In addition to its other indemnification and defense obligations under this Agreement, the Consultant shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorneys fees and litigation expenses), suits, judgments, or damages (collectively “Damages”) arising from or relating to any request for records related to this Agreement, to the extent such Damages are caused by action or inaction of the Consultant. This indemnification and defense obligation shall survive the expiration or termination of this Agreement.

4.5 MAINTENANCE/INSPECTION OF RECORDS. The Consultant shall maintain all books, records, documents, and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit.

Representatives of the City and/or the Washington State Auditor may copy such books, accounts, and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

4.6 INDEMNITY.

a. **Indemnification and Hold Harmless.** The Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

c. The provisions of this Section 4.6 shall survive the expiration or termination of this Agreement.

d. The Consultant hereby knowingly, intentionally, and voluntarily waives the immunity of the Industrial Insurance Act, Title 51 RCW, solely for the purposes of the indemnity contained in subpart "a" of this Section 4.6. This waiver has been mutually negotiated by the parties.

_____ (City Initials)

_____  (Contractor Initials)

4.7 INSURANCE.

a. **Insurance Term.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Services hereunder by the Consultant, its agents, representatives, or employees.

b. **No Limitation.** Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

c. **Minimum Scope of Insurance.** Consultant shall obtain insurance of the types and coverage described below:

- (1) Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
- (2) Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4) Professional Liability insurance appropriate to the Consultant's profession.

d. **Minimum Amounts of Insurance.** Consultant shall maintain the following insurance limits:

- (1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- (2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- (3) Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

e. **Other Insurance Provision.** The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

f. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

g. **Verification of Coverage.** The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the Services.

h. **Notice of Cancellation.** The Consultant shall provide the City with written notice of any policy cancellation within two business days of the Consultant's receipt of such notice.

i. **Failure to Maintain Insurance.** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Consultant to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

j. **Insurance to be Occurrence Basis.** Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy. Professional liability insurance may be written on a "Claims-made" basis if it is maintained for a period of three (3) years following completion of the services.

k. **City Full Availability of Consultant Limits.** If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

4.8 LEGAL RELATIONS. The Consultant shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the Services to be performed under this Agreement. The Consultant represents that it and all employees assigned to perform any of the Services under this Agreement are in full compliance with the statutes of the State of Washington governing the Services and that all personnel to be assigned to the Services are fully qualified and properly licensed to perform the work to which they will be assigned.

4.9 INDEPENDENT CONTRACTOR.

a. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants, and agrees that the Consultant's status as an independent contractor in the performance of the Services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the Services required under this Agreement. The Consultant shall not make

a claim of City employment and shall not claim any related employment benefits, social security, and/or retirement benefits.

b. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work to the Services that the Consultant performs under this Agreement.

d. Prior to commencement of Services, the Consultant shall obtain a business license from the City.

4.10 EMPLOYMENT.

a. The term “employee” or “employees” as used herein shall mean any officers, agents, or employee of the Consultant.

b. Any and all employees of the Consultant, while performing any Services under this Agreement, shall be considered employees of the Consultant only and not of the City. The Consultant shall be solely liable for: (1) any and all claims that may or might arise under the Workman’s Compensation Act, Title 51 RCW, on behalf of any said employees while performing any Services under this Agreement, and (2) any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while performing any Services under this Agreement.

c. The Consultant represents, unless otherwise indicated below, that all employees of the Consultant that will perform any Services under this Agreement have never been retired from a Washington State retirement system, including but not limited to Teacher (TRS), School District (SERS), Public Employee (PERS), Public Safety (PSERS), law enforcement and fire fighters (LEOFF), Washington State Patrol (WSPRS), Judicial Retirement System (JRS), or otherwise. *(Please use initials to indicate No or Yes below.)*

df No, employees performing the Services have never been retired from a Washington state retirement system.

_____ Yes, employees performing the Services have been retired from a Washington state retirement system.

In the event the Consultant checks “no”, but an employee in fact was a retiree of a Washington State retirement system, and because of the misrepresentation the City is required to defend a claim by the Washington State retirement system, or to make contributions for or on account of the employee, or reimbursement to the Washington State retirement system for benefits paid, the Consultant hereby agrees to save, indemnify, defend and hold the City harmless from and against all expenses and costs, including reasonable attorney fees incurred in defending the claim of the Washington State retirement system and from all contributions paid or required to be paid, and for all reimbursement required to the Washington State retirement system. In the event the Consultant checks “yes” and affirms that an employee providing work has ever retired from a Washington State retirement system, every said employee shall be identified by the Consultant and such retirees shall provide the City with all information required by the City to report the employment with Consultant to the Department of Retirement Services of the State of Washington.

4.11 NONASSIGNABLE. Except as provided in **EXHIBIT B**, the Services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

4.12 SUBCONTRACTORS AND SUBCONSULTANTS.

a. The Consultant is responsible for all work or services performed by subcontractors or subconsultants pursuant to the terms of this Agreement.

b. The Consultant must verify that any subcontractors or subconsultants the Consultant directly hires meet the responsibility criteria for the Services. Verification that a subcontractor or subconsultant has proper license and bonding, if required by statute, must be included in the verification process. If the parties anticipate the use of subcontractors or subconsultants, the subcontractors or subconsultants are set forth in **EXHIBIT B**.

c. The Consultant may not substitute or add subcontractors or subconsultants without the written approval of the City.

d. All subcontractors or subconsultants shall have the same insurance coverage and limits as set forth in this Agreement and the Consultant shall provide verification of said insurance coverage.

4.13 CONFLICTS OF INTEREST. The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant’s client base and shall obtain written permission from the City prior to providing services to third parties when a conflict or potential conflict of interest exists. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

4.14 CITY CONFIDENCES. The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate, or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or the Services provided to the City.

4.15 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION. The Consultant agrees to comply with equal opportunity employment and not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age, or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training; or rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth its nondiscrimination obligations. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

4.16 UNFAIR EMPLOYMENT PRACTICES. During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

5. CITY APPROVAL REQUIRED. Notwithstanding the Consultant's status as an independent contractor, the Services performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if the Services have been completed in compliance with the Scope of Services and City requirements.

6. GENERAL TERMS.

6.1 NOTICES. Receipt of any notice shall be deemed effective three (3) calendar days after deposit of written notice in the U.S. mail with proper postage and address.

Notices to the City shall be sent to the following address:

CITY OF MARYSVILLE

Steven Miller

80 Columbia Avenue

Marysville, WA 98270

Notices to the Consultant shall be sent to the following address:

MACLEOD RECKORD

Connie Reckord
110 Prefontaine Place South, Suite 600
Seattle, WA 98104

6.2 TERMINATION. The City may terminate this Agreement in whole or in part at any time by sending written notice to the Consultant. As per Section 6.1, the Consultant is deemed to have received the termination notice three (3) calendar days after deposit of the termination notice in the U.S. mail with proper postage and address. The termination notice is deemed effective seven (7) calendar days after it is deemed received by the Consultant.

If this Agreement is terminated by the City for its convenience, the City shall pay the Consultant for satisfactory Services performed through the date on which the termination is deemed effective in accordance with payment provisions of Section 3, unless otherwise specified in the termination notice. If the termination notice provides that the Consultant will not be compensated for Services performed after the termination notice is received, the City will have the discretion to reject payment for any Services performed after the date the termination notice is deemed received.

6.3 DISPUTES. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

6.4 EXTENT OF AGREEMENT/MODIFICATION. This Agreement, together with exhibits, attachments, and addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by a written supplemental amendment properly signed by both parties.

6.5 SEVERABILITY.

a. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining parts, terms, or provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

b. If any part, term, or provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that part, term, or provision shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

6.6 NONWAIVER. A waiver by either party of a breach by the other party of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

6.7 FAIR MEANING. The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

6.8 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

6.9 VENUE. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

6.10 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

6.11 AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT. The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth herein.

DATED this _____ day of _____, 20_____.

CITY OF MARYSVILLE

By _____
Jon Nehring, Mayor

DATED this 19th day of October, 2021.

MACLEOD RECKORD

By 

Connie Reckord (Name)
Its: Managing Member (Title)

ATTEST/AUTHENTICATED:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

EXHIBIT A
Scope of Work
Fee Determination

EXHIBIT A-1
Scope of Work
 October 18, 2021

City of Marysville
Marysville – Lake Stevens Trail Connector

PROJECT DESCRIPTION

The City of Marysville, in collaboration with the City of Lake Stevens, seeks to develop a project consisting of a 4.7-mile trail extension of the Bayview Trail within Marysville, extending south into Lake Stevens. The project's northern terminus is 64th St NE (SR 528) and its southern terminus is 8th St SE. The City of Lake Stevens has developed engineering for the trail between 8th St SE and 20th St SE, so this routing study will extend only to the south side of 8th St SE with consideration of the improvements already proposed to the south. The trail is located in multiple utility corridors, and along city streets, and traverses through both city jurisdictions and Snohomish County. The multi-jurisdictional shared use path is an important recreational amenity and will result in making connection to the larger non-motorized systems in these communities.

The scope of work includes evaluation, recommendation, and preliminary design for a final alignment for the trail and location of access drives and crossing treatments at the many roadways the trail will cross. Services include preliminary design and engineering and include preparation of documents for purposes of submitting application for grant funding; public outreach and presentation; geotechnical evaluation and recommendations; environmental analysis and conceptual mitigation planning; and permit evaluation and support with early permit application.

This scope of work will support the initial phase of the project. Additional services to complete the design, to acquire right-of-way, and to support construction will be supplemented in future phases of the project. The Project Study Area is as defined by the limits shown on the attached Exhibit 1.

OUTLINE OF SCOPE OF SERVICES

The MacLeod Reckord team (Consultant) will provide planning, design, engineering, environmental, and permit application support services to complete the planning effort in accordance with contract requirements as established by the City of Marysville (City). Scope of work shall consist of Tasks noted below:

- I. Preliminary Design Services
 - Task 01 Project Management
 - 02 Data Collection and Programming
 - 03 Base Map and Allowance for Field Survey
 - 04 Critical Area Reconnaissance
 - 05 Permit Strategy
 - 06 Geotechnical Evaluation and Reporting
 - 07 Transportation Analysis and Reporting
 - 08 ROE's, Real Estate Evaluation and Reporting
 - 09 Conceptual Design Alternatives
 - 10 Preferred Concept and Phasing
 - 11 30% Schematic Design
 - 12 Public Outreach Support
 - 13 Grant Application Support
 - 14 Cultural Resource Desktop Review

A Management Reserve may be added to the contract to expand upon services outlined in this scope. Additional tasks for continued design, engineering, and environmental documentation services may be negotiated at the discretion of the City.

PROJECT TEAM ROLES AND RESPONSIBILITIES

MacLeod Reckord (Consultant) will contract with qualified subconsultants as indicated below. Roles and responsibilities are as follows:

1. **MacLeod Reckord PLLC (MR)** (Consultant) – Project management, client and team coordination, public outreach facilitation, trail and trailhead planning / design and documentation, grant application support, overall document coordination, project oversight, and quality control.
2. **Parametrix (PMX)** – Survey and mapping, civil engineering, stormwater and utilities design, utility coordination, critical areas reconnaissance and reporting, permit strategy and environmental documentation and permit application support.
3. **Transpo Group (Transpo)** – Transportation planning, traffic engineering, signal and crossing design, and documentation.
4. **RES Group NW (RES)** – Right of Entry approval, acquisition and easement evaluation, assessment, and strategy.
5. **HWA GeoSciences (HWA)** – Geotechnical evaluation and reporting, geotechnical engineering services, and document review.

GENERAL PROJECT ASSUMPTIONS

1. Consultant will pursue rights of entry as necessary for Consultant team to access the project area (see Task 08). City of Marysville (City) will provide support in this effort with correspondence and collaborative meetings as necessary.
2. Correspondence and coordination with project partners and grant agencies: City of Lake Stevens (CLS), Washington State Recreation and Conservation Office (RCO), Washington State Department of Transportation (WSDOT), etc. will be the responsibility of the City but may be expanded to include direct correspondence with the Consultant, as approved by the City. Direct correspondence with WSDOT is authorized by the City for issues regarding SR 528 crossing.
3. The City is responsible for advertising/notification and providing the venue (if in person) for public outreach meetings.
4. Bicycle and Pedestrian volumes, forecasts, and level of service information from City (as available) may be provided to the Consultant. No new level of service data is anticipated to be needed for this project.
5. Traffic volume and traffic speed data will be provided by the Consultant for the estimated 15 crossing locations for the project, including: 64th St NE (SR 528), 80th Ave NE / 50th St NE, 49th St NE, 44th St NE / Line Rd, 40th St NE, 35th St NE, Soper Hill Road, 19th Pl NE, 10th St NE (may have multiple options), 84th Dr NE, Lundeen Parkway, Vernon Road, SR 204, 1st St SE, and 8th St SE.
6. Conceptual design plans for road crossing treatment will be developed to sufficient level for costing and grant application.
7. Lighting/electrical costs will be included based on best available information regarding service. Connection fees for electrical will be provided to the Consultant by the applicable utility.
8. LEED™ Process is not included at this time, however sustainable building practices will be incorporated into the planning strategies and preliminary design as program and budget allow.
9. Cost opinion will be in a format detailed enough for the City to extrapolate for PRISM but will not be in PRISM software format.

10. All deliverables will be in electronic file format unless otherwise specified.

DESIGN STANDARDS / CRITERIA

1. All work will comply with City of Marysville, City of Lake Stevens, WSDOT, and AASHTO Pedestrian and Bicycle facilities design guidelines. Conflicting guideline directives will be resolved by the City.
2. Documentation will be in the most current version of ACAD and Civil 3D available (vs 2020 at the time of contract but subject to updating), or as mutually agreed.
3. City of Marysville and City of Lake Stevens Road Standards will be referenced (respectively) for work in the city right of way. Snohomish County Road Standards will be referenced for work in county right of way.
4. City of Marysville Stormwater Manual, current edition, City of Lake Stevens Stormwater Manual, current edition, or Snohomish County Drainage Manual, current edition, per applicable jurisdiction.
5. WSDOT, *Standard Plans*, current edition
6. WSDOT, *Standard Specifications for Road, Bridge, and Municipal Construction*, English, current edition and Amendments.
7. WSDOT *Local Agency Guidelines Manual (LAG)*
8. WSDOT *Design Manual*
9. WSDOT *Highway Runoff Manual*, current edition
10. WSDOT *Hydraulics Manual*, current edition
11. *Manual of Uniform Traffic Control Devices (MUTCD)*, current edition
12. United States Access Board *Guidelines and Standards for Recreation Facilities-Trails*
13. Relevant utility purveyor design guidelines.

SCHEDULE

The scope of work is premised on a Notice-to-Proceed date of approximately November 2021 and completion date of approximately June 2023. See Exhibit 2 Draft Schedule.

PART I – PRELIMINARY DESIGN SERVICES

TASK 1: PROJECT MANAGEMENT

- 1.1 Coordination and Review: Coordinate the Consultant design team to ensure that the work is completed on schedule, is technically competent, and meets City's requirements. Develop and implement the internal work plan and provide overall coordination and review of the work. Organize and administer regular internal coordination meetings of the design team to facilitate execution of the work.
- 1.2 Coordination Meetings: Meet with City and their assigns (may include but not be limited to multiple City departments, boards, administrators, and council, as well as others noted below) to discuss and/or present project issues, schedule, progress, and general coordination of effort. Others to coordinate with:
 - a. City of Lake Stevens
 - b. Snohomish County
 - c. Utility purveyors:
 - (1) Olympic Pipeline
 - (2) Bonneville Power Administration
 - (3) Snohomish County PUD
 - (4) Puget Sound Energy
 - (5) Seattle City Light
 - d. WSDOT

- 1.3 Document Management: Provide for the management of drawings and documents received and generated over the course of the project, including review, distribution, filing, and storage.
- 1.4 Project Schedule: Provide a detailed schedule (1 draft, 1 final) for the Consultant work elements, integrating project deliverables and milestones with schedules identified by City. Update schedule one time at the completion of Conceptual Design Alternatives.
- 1.5 Subconsultant Management: The Consultant shall provide ongoing overview of progress, review of invoices, and overall coordination of Subconsultants involved in the project.
- 1.6 Quality Assurance/Quality Control: Conduct a quality assurance check of all deliverables prior to submittal to the City. All team members to apply their defined and proven quality control reviews/process to their specific deliverables for draft and final submittals. Budget for Subconsultant QA/QC work is covered in subsequent tasks.
- 1.7 Invoicing: Prepare and submit regular invoicing and monthly progress reports.

Assumptions:

- *Coordination and review meetings will be held remotely unless otherwise noted.*
- *Regular check-in meetings will be held remotely, will include team members as appropriate, and will be scheduled approximately twice monthly.*
- *For estimating purposes team members refer to Exhibit 3 Meeting Schedule, which will be adjusted as required periodically.*

Deliverables:

- *Meeting Schedule*
- *Meeting Notes as required*
- *Draft, Final, and Interim Adjusted Schedule*
- *Invoicing and Progress Reports*

TASK 2: DATA COLLECTION AND PROGRAMMING

- 2.1 Data Research and Assembly: Assemble documentation as provided by the City (and others) to inform project design, permit requirements, and engineering effort. Research data may extend beyond the limits of the Project Study Area at the discretion of the Consultant.
- 2.2 Site Reconnaissance and Base Map Verification: For purposes of assessing overall site and condition at boundaries, verifying accuracy of base map, mapping field conditions, and determining whether and where field survey or field critical area delineation is required. Map site opportunities and constraints that will influence design, critical area impacts, schedule, and costs throughout the Project Study Area.
- 2.3 Program Assessment and Opportunities/Constraints: Identify the full range of program elements considered for the trail. Prepare a summary statement as program elements relate to the opportunities/constraints. Prepare draft and final statement.

Assumptions:

- *Draft programming will be informed through City staff input and reference to cited documents. Final programming statement will be informed through additional input gathered as part of the public outreach task.*

Deliverables:

- *Existing conditions and opportunities/constraints map of Project Study Area*
- *Program Assessment and Opportunities/Constraints, draft and final*

TASK 3: BASE MAP AND ALLOWANCE FOR FIELD SURVEY

- 3.1 Base Map Development: Utilizing GIS and LiDAR data, and any survey data available from City or other public sources, assemble a draft and final survey base map suitable for preliminary alignment documentation. Features to include as much infrastructure in the corridor as is available, approximations of critical areas and significant natural features, limit of canopy, road ROW's, approximations of boundaries based on Snohomish County parcel data, with aerial overlay, and other information as publicly available. Extend to limits as shown or described in Exhibit 1, Project Study Area.
- 3.2 Field Survey Contingency: Field survey and mapping to supplement what is described in 3.1, or as required to locate and map significant features as authorized by the City. Integrate field survey with base map to provide one document. Survey contingency work will not exceed the amount as shown in this subtask. Survey contingency work may include contracting with an approved underground utility locate service for utility locating, which will be completed within the not-to-exceed amount.

Assumptions:

- *Boundary depiction is not boundary survey. Boundary and parcel lines will be based on Snohomish County parcel data.*
- *Field survey is proposed to be conducted following selection of a preferred concept and phasing plan to support the development of preliminary design.*
- *The field survey contingency will be limited to approximately three (3) days for one survey crew with associated data management and mapping and will not exceed the amount as shown in this subtask.*
- *Base map data will be limited to publicly available data except as supplemented under task 3.2.*

Deliverables:

- *Base Map, referenced to current city datum (horizontal and vertical), draft and final.*
- *(Contingency Services, as authorized) Field Survey Base Map, with additional field survey and critical area delineation as approved, draft and final.*

TASK 4: CRITICAL AREA RECONNAISSANCE

- 4.1 Critical Area Mapping: Integrate critical area mapping from available data into the survey base map. CA mapping will be at a high level, without formal delineation (unless otherwise identified in Tasks 4.5 and 4.6) but will be characterized and approximate classifications/ratings for wetland and streams based on the appropriate local code.
- 4.2 Geohazard Mapping: Integrate geohazard mapping, from data based on publicly available information, into base map.
- 4.3 Conduct on-site reconnaissance level investigation to review and adjust the critical areas mapping and collect information for critical areas rating and buffer/setback determinations.
- 4.4 Prepare a brief technical memorandum describing the study methodology and findings of the reconnaissance level investigation.
- 4.5 Conduct ordinary high water mark delineations and measure bank full width and other parameters at up to three (3) proposed stream crossing locations for use to evaluate the type, size, and location of proposed stream crossing structures. Information from additional stream crossings will be evaluated using existing data.
- 4.6 Critical Areas Mapping Contingency: Conduct critical areas (wetland and/or additional ordinary high water mark) delineations to supplement the reconnaissance-level evaluation (Tasks 4.1 and 4.2) or as required to locate and map significant features as authorized by the City. Integrate field delineation with other mapping to provide one document.

Assumptions:

- *Preliminary wetland ratings will be based on the critical areas code, and other regulations specific to the jurisdiction that work will occur (Cities of Marysville or Lake Stevens or Snohomish County).*
- *The on-site reconnaissance level investigation includes one (1) day of field work. Notes will be taken on stream and wetland buffer conditions, general habitat conditions, and any incidental fish/wildlife or rare plant observations will be recorded. The scope does not include specific survey for any individual fish, wildlife, or plant species.*
- *The Critical Areas mapping, and classifications/ratings will support concept and preliminary design. Additional work will be required during subsequent design phases to develop information and documentation to support permit preparation and submittals. No permit submittals are included in this task.*
- *Critical Areas contingency work assumes one (1) day of additional field work and will not exceed the amount as shown in this subtask.*

Deliverables:

- *Critical Areas mapping integrated with base map*
- *Critical Areas Technical Memorandum, draft and final*
- *(Contingency Services, as authorized) Field Delineation, integrated with Field Survey, to develop an updated and more accurate base map, draft and final*

TASK 5 PERMIT STRATEGY

- 5.1 Permit Strategy: Identify range of federal, state, and local permit requirements that may be required for up to three Conceptual Design Alternatives (Task 9) based on anticipated level of impact. Collaborate with team and agencies for recommended strategy/sequence for pursuit of targeted permits and range of timeline for approval for Preferred Concept (Task 10).
- 5.2 Permit Matrix: Prepare a permit matrix for the selected alternative/phases.

Assumptions:

- *The permit matrix will be based on the environmental procedures, critical areas code, and other regulations specific to the jurisdiction that work will occur (Cities of Marysville or Lake Stevens or Snohomish County).*
- *The permit matrix will focus on typically provided owner provided environmental permits or approvals and will not include construction permits or contractor-provided permits.*

Deliverables:

- *Permit Matrix, draft and final*

TASK 6: GEOTECHNICAL EVALUATION AND REPORTING

- 6.1 Geotechnical Evaluation and Reporting: Review existing subsurface information for the project study area. Provide consultation on construction of trail, service roads, walls, elevated structure, infiltration, wetland creation sites, and any unique requirements for construction. Summarize observations and recommendations in form of a brief technical memorandum on site conditions as known based on site reconnaissance and available data. No field exploration anticipated with this task.
- 6.2 Test Pits: Supplement existing subsurface exploration and evaluation for the project alignment in selected areas [to be determined] for infiltration evaluation, pavement installation, lighting/signal poles, wall construction, and elevated structure construction. Perform field visits to explore subgrade condition in up to eight (8) locations using backhoe excavated test pits that extend to depths of at least six (6) feet to observe near surface soil condition for depths of wetland soils and potential for infiltration

- 6.3 Geotechnical Recommendations: Based on 30% Plan, provide updated recommendations on construction of trail, service roads, walls, elevated structure, infiltration, wetland creation sites, and any unique requirements for construction. In addition, provide recommendations for future testing in the corridor. Identify scope of explorations needed to provide input to meet requirements for design, as determined based on requirements of the utility purveyors, City and County jurisdictions, and WSDOT. Incorporate this information into the Preliminary Geotechnical Recommendations Technical memo.

Assumptions:

- *Permits to access private property will be obtained by others at no additional cost to Consultant.*
- *Test pits can be backfilled without compaction following excavation.*
- *Evaluation for feasibility to use infiltration will be preliminary. No testing to measure infiltration rates will be conducted for this phase of the project.*
- *Test pits can be completed in two working days.*
- *The scope of work is related solely to geotechnical engineering evaluation of site soil and ground water as they relate to geotechnical design for the project improvements. Neither identification nor evaluation of contaminants that may be present in the soil or ground water is included in this scope of work.*
- *HWA will respond to one (1) round of comments on the draft geotechnical evaluation and preliminary technical memo.*

Deliverables:

- *Geotechnical Evaluation and Preliminary Recommendations Technical Memo, draft and final.*

TASK 7: TRANSPORTATION ANALYSIS AND REPORTING

- 7.1 Crossing Assessment and Reporting: For Conceptual Design Alternatives and Preferred Concept, research and gather available data on crossings as noted under Assumptions. Research and document traffic conditions for crossings as noted under Assumptions. Provide information on traffic speeds and volumes. Provide sight distance analysis for each crossing location. Provide recommendation for crossing control (which may include signal or other crossing control), channelization, and signage. Provide planning level cost estimate. Summarize observations and recommendations in form of a preliminary traffic study report.

Assumptions:

- *Crossings (north to south) – assume all to be at-grade:*
 - *64th St NE (SR 528)*
 - *80th Ave NE / 50th St NE*
 - *49th St NE*
 - *44th St NE / Line Rd*
 - *40th St NE*
 - *35th St NE*
 - *Soper Hill Road*
 - *19th Pl NE*
 - *10th St NE (may have multiple options)*
 - *84th Dr NE*
 - *Lundeen Parkway*
 - *Vernon Road*
 - *SR 204*
 - *1st St SE*
 - *8th St SE*

Deliverables:

- *Traffic Analysis, Conceptual Design Alternatives Crossing Control, and Preferred Concept Recommendation information assembled in one Technical Memo, one (1) draft and one (1) final.*
- *Planning level cost estimates provided under separate format.*

TASK 8: RIGHTS OF ENTRY, REAL ESTATE EVALUATION AND REPORTING

- 8.1 Rights of Entry (ROE): Seek and obtain rights of entry from the following utility purveyors, owners, or easement holders for the design team and City personnel to access the site over the course of the project (up to twelve (12) ROEs):
- Bonneville Power Administration
 - Puget Sound Energy
 - Seattle City Light
 - Snohomish County PUD
 - Olympic Pipeline
 - Lake Stevens Sewer District
 - Private Property Owners
- 8.2 Property Ownership Assessment: Assess ownership throughout the Project Study Area and identify any private property fee simple ownership and easements. Up to twelve (12) properties.
- 8.3 Perform Feasibility and Evaluation: Perform a feasibility evaluation of the Conceptual Design Alternatives with respect property and easement impacts. Identify requirements for acquisition/easement. Up to twelve (12) properties.
- 8.4 Review Title Reports: Review up to six (6) title reports and identify any problematic encumbrances and/or title issues and propose potential solutions; identify recommendation(s).
- 8.5 Property/Easement Costs: Determine cost opinion for acquisitions/easements for twelve (12) properties for the Preferred Concept.

Assumptions:

- *The City will obtain the necessary title reports for properties for the project. These include: [unnamed for now].*
- *Cost Opinion for acquisition/easement will be based on assessor average values for property value or a percentage of that for easements.*
- *Additional, or more detailed calculations as may be required for ROW Funding Estimate will be developed at a later date under a supplemental scope and fee.*
- *Scope limited to total hours indicated in fee proposal.*
- *Services as requested.*

Deliverables:

- *Rights of Entry for up to twelve (12) properties/owners*
- *Technical memorandum describing ownership/easement conditions throughout the Project Study Area; results of feasibility evaluation related to impacts associated with the Conceptual Design Alternatives; title report review observations and recommendations; and cost opinion for acquisition/easement required for the Preferred Concept; one (1) draft and one (1) final.*

TASK 9: CONCEPTUAL DESIGN ALTERNATIVES

- 9.1 Conceptual Trail Alignment Alternatives: Analyze a range of up to three (3) alternatives that accommodate needs and/or design criteria as identified through programming effort, and input from City staff, utility purveyors, public, and other stakeholders. Develop draft

conceptual plans showing alternatives. Work study exhibits will be generated for staff and ultimately public review. Identify variations in: location of access points; service road/trail combined segments; potential impact to critical areas and established vegetation; and significant alternatives to drainage and other utility design strategies. Depict in the graphics requirements for clearance/setback from utility infrastructure; areas with mandatory separated service road/trail segments; other requirements as dictated by utility purveyors.

- 9.2 Planning Level Cost Opinions: Develop planning level (for purposes of overall gross comparison) cost opinions for up to three (3) alternatives.

Assumptions:

- *Conceptual plans may be based on information that does not include accurate field measure topographic/planimetric survey or critical area delineation.*

Deliverables:

- *Three (3) concept level alternative plans, in graphic form suitable for distribution to the public, one (1) draft and one (1) final*
- *Three (3) planning level estimates for the concept alternatives, one (1) final*

TASK 10: PREFERRED CONCEPT AND PHASING

- 10.1 Preferred Trail Alignment Concept: Develop a preferred plan from input from City staff, utility purveyors, public, and other stakeholders. Provide clarity and definitive recommendations on all aspects of design as described in Task 9.1.
- 10.2 Phasing: Provide description and rationale for a recommended phased development of the project.
- 10.3 Planning Level Cost Opinion: Develop planning level cost opinions for Preferred Concept, identifying each recommended phase of development.

Deliverables:

- *One (1) preferred concept plan, in graphic form suitable for distribution to the public, one (1) draft and one (1) final*
- *One (1) planning level estimate for the preferred concept plan, one (1) final*

TASK 11: 30% DESIGN

- 11.1 Trail Alignment Plan and Profile: Develop 30% plan/profile (as base information allows) for trail alignment based on input from the City. Documentation to include conceptual cross sections as necessary with sufficient detail to show the limits of impact to critical areas.
- 11.2 Access Improvement Plan: Develop 30% plan for access improvements. These are areas that may combine service road entry and/or private property shared access entry.
- 11.3 Drainage Plan: Complete preliminary engineering analysis and design of surface water conveyance and stormwater facilities for the trail alignment plan, access improvements, and trailhead. Develop 30% storm drainage plans for stormwater collection, conveyance, and mitigation facilities. Identify fish passage culvert locations and approximate structure size. Conduct downstream analysis as required by local manuals. Develop preliminary drainage memorandum and confirmation of approach as required. Provide cost opinion.
- 11.4 Utility Plan: Coordinate with affected utility companies to address necessary relocations and adjustments. Provide notes to MR that will be incorporated into the Plan/Profile, but no separate utility plans are provided at this phase. Provide cost opinion.
- 11.5 Structural Plan: Develop conceptual plans to identify potential segments for elevated trail and approximate retaining wall locations. Provide cost opinion.

- 11.6 Crossing Plan: Develop conceptual plan and identify standard details for crossing treatment of crossings identified in Task 7. Provide cost opinion.
- 11.7 Electrical Service: Provide cost opinion for electrical service to signals as identified in Crossing Plan.
- 11.8 Planting Plan: Develop 30% plans and conceptual plant schedule for impacted areas of the site. Plan may include reference (hatch pattern only) to environmental mitigation planting if the preferred mitigation area is located within the Project Study Area.
- 11.9 Ground Disturbance Compiled File: Combine work from above tasks in a single base file showing all combined ground disturbing activities (grading, probable utility trenching, stormwater). This file will be used for conceptual mitigation planning cost estimating.
- 11.10 Critical Areas Impact Restoration and Mitigation Memo: Coordinate with the team to identify anticipated critical areas and develop a planning level cost opinion for critical areas mitigation. The planning level cost opinion will be based on areas of potential impact and the generalized per acre cost for the anticipated type of restoration or mitigation by the applicable local agency.
- 11.11 30% Level Cost Opinion: Develop cost opinion for the project in its entirety. See Assumptions below for items not shown on the plans but included in the estimate.
- 11.12 Illustrative Graphics for On-Line Posting: Assemble and format final illustrative graphics and narrative for on-line posting. Documents to be posted to City website by City staff.
- 11.13 Review/approval: Provide complete 30% submittal for City review and comment.

Assumptions:

- *30% plans may be based on information that does not include accurate field measure topographic/planimetric survey or critical area delineation. Level of detail with regard to plan/profile is dependent upon base file accuracy.*
- *The Storm Drainage Plan will be prepared to support preliminary design and the development of the 30% cost opinion. Additional separate jurisdictional stormwater of drainage reports may be required during final design support project approvals and permitting.*
- *Information excluded from plan sets but included in 30% cost opinion:*
 - *Demolition plans*
 - *TESC and SWPPP requirements*
 - *Utility plans (however notes will be included in plan/profile)*
 - *Electrical plans*
 - *Wetland, stream, and buffer impact mitigation plan*
 - *Construction Details*

Deliverables:

- *Trail Alignment Plan/Profile*
- *Access Improvement Plan*
- *Drainage Plan*
- *Preliminary Storm Drainage Memorandum*
- *Structural Plan*
- *Crossing Plan*
- *Planting Plan*
- *Ground Disturbance Base File (internal work product only)*
- *Compensatory Mitigation Memo*
- *30% Cost Opinion*
- *All plans, memoranda, and estimates one (1) draft, one (1) final*

TASK 12: PUBLIC OUTREACH SUPPORT

- 12.1 Public Outreach Plan: Develop a public outreach plan that defines exhibits, schedule and sequence for public input. Format will be flexible to accommodate a combination of on-line web exhibits including survey, meetings with property owners or targeted stakeholders, and in-person presentations/workshops for the general public. Public outreach plan anticipates the following sequence of outreach events:
- 12.2 Prepare Draft Exhibits for Internal and City Review: Opinion survey for two (2) meetings; Survey summary results; Graphics of Conceptual Design Alternatives; Graphics of Preferred Concept.
- 12.3 Property Owners/Targeted Stakeholder Meetings: Present Program Assessment and Opportunities/Constraints graphic (Task 2) and Concept Design Alternatives (Task 9) and Preferred Concept (Task 10) to this group. These are individuals who rely on the corridor for access to private residences/business properties. These meetings are intended to seek input prior to moving forward with Public Outreach Meetings.
- 12.4 Public Outreach Meetings: Assemble prepared material as described in Task 12.3 and present material in Public Outreach Meetings #1 and #2.
- 12.5 On-Line Distribution: Prepare opinion survey (Survey Monkey) with delivery of Program Assessment and Opportunities/Constraints graphic (Task 2) and Concept Design Alternatives (Task 9). Generate summary results of survey for on-line distribution. Prepare Preferred Concept (Task 10) issue in a format the County may upload, however no opinion survey to go out with this version.
- 12.6 Public Outreach Summary: Prepare Summary of process, input, and survey results in a technical memorandum format.

Assumptions

- *Meetings will be virtual, with an allowance for in person as CDC protocol allows, and will include in this order:*
 - *Targeted Stakeholder meeting #1*
 - *Targeted Stakeholder meeting #2*
 - *Public meeting #1*
 - *Targeted Stakeholder meeting #3*
 - *Public meeting #2*
- *City will develop its own advance notice flyers or postcard notices for upcoming meetings and distribute/mail them out.*
- *City will host its own website/webpage, and post imagery, text, and survey provided by Consultant.*
- *Coordination with property owners/stakeholders will be to the limits noted in the fee proposal.*

Deliverables:

- *Public Outreach Plan (narrative description of process with timeline)*
- *Exhibits for Distribution: (2) draft and (2) final opinion surveys; (1) final opinion survey summary*
- *Public Outreach Summary*
- *Graphics for Program Assessment and Opportunities/Constraints, Conceptual Design Alternatives, and Preferred Concept issue as described in other Tasks*
- *Meeting notes*

TASK 13: GRANT APPLICATION SUPPORT

- 13.1 Preparatory Meetings: Prepare materials and meet with grant Project Manager to discuss project and deliverables. Prepare for and attend up to two (2) meetings.
- 13.2 Initial Letter and Application: Prepare letter of intent and draft application for review and submittal by City. Finalize initial application based on input from City.
- 13.3 PowerPoint Presentation: Prepare initial, intermediate, and final PowerPoint slide show for City presentation. Assist with narrative for City's presentation.

Assumptions:

- *Scope limited to total hours indicated in fee proposal.*
- *Services as requested.*

Deliverables:

- *Deliverables as requested.*

TASK 14 CULTURAL RESOURCES DESKTOP REVIEW

- 14.1 Desktop Review: Review known cultural resources (archaeological and aboveground built environment) concerns for the Study Area through readily available resources including the Department of Archaeology and Historic Preservation's online database (WISAARD), ethnographic records, historic maps, assessor records, available geotechnical reports.
- 14.2 Desktop Review Memo: Prepare a desktop review memo for the Study Area outlining the results of the background research and recommending level of effort for complying with Executive Order 21-02. The memo will include maps calling out any cultural resources concerns within the Study Area.
- 14.3 Team Coordination: Attend up to four meetings with team and coordinate on alternatives analysis relative to cultural resources.

Assumptions:

- *The desktop review will be focused on the full Study Area and will evaluate any significant differences in potential impacts to cultural resources between proposed alternatives.*
- *The Area of Potential Effects will not be defined until after 30% design.*
- *No fieldwork will be conducted.*
- *Meetings will be conducted virtually.*
- *No outreach to Tribes will be conducted until after 30% design.*

Deliverables:

- *Desktop Review Memo, draft and final*



Exhibit 1 a
64th St NE to 44th St NE



Exhibit 1 b
44th St NE to Soper Hill Road

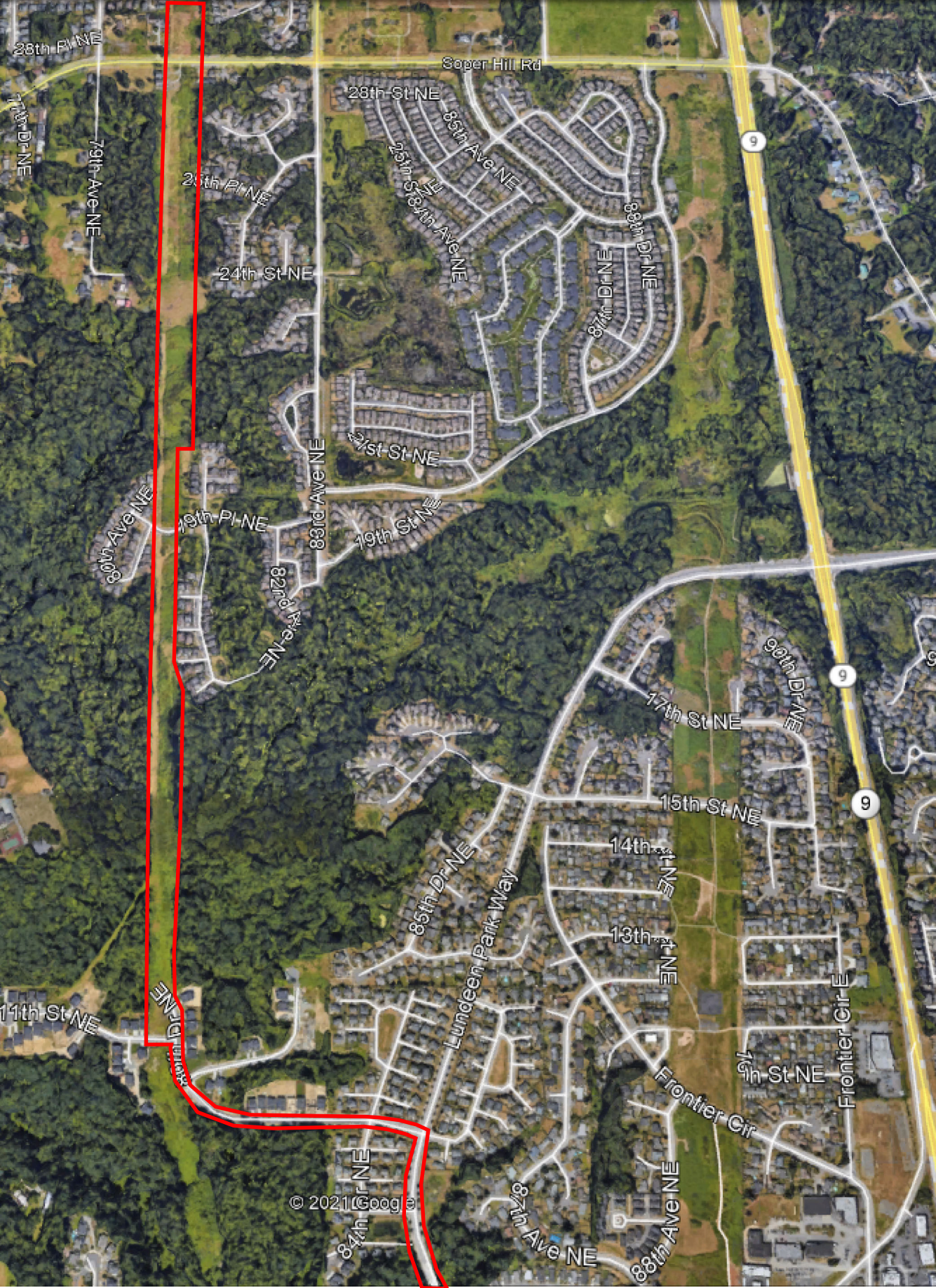


Exhibit 1 c
Soper Hill Road to Lundeen Parkway

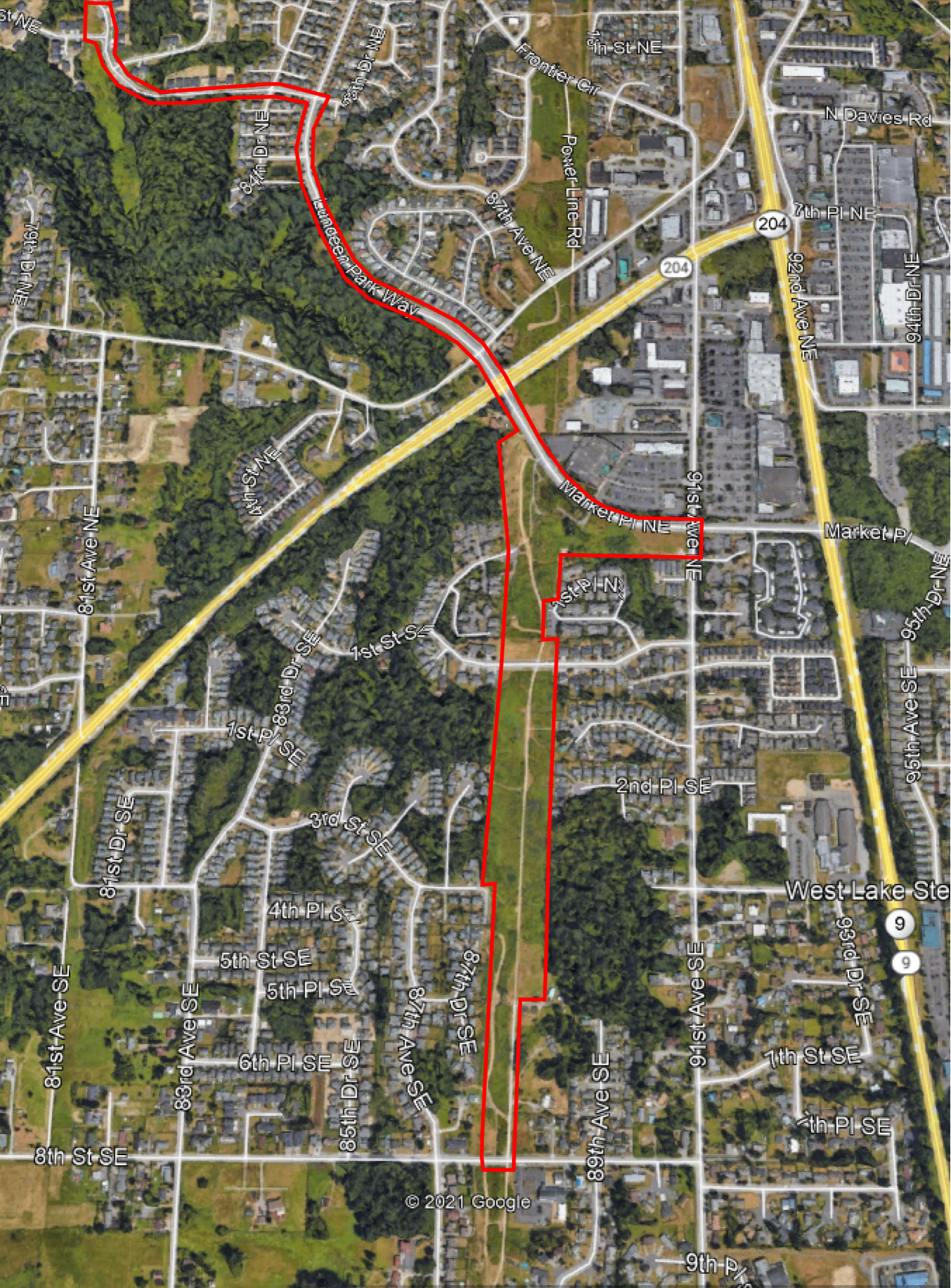


Exhibit 1 d
Lundeen Parkway to 8th St SE

Exhibit 2 - Draft Schedule

October 2021

	TASK	2021			2022												2023						
		O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J
	PRELIMINARY DESIGN																						
1	Project Management																						
2	Data Collection and Programming																						
3	Base Map and Allow for Field Survey																						
4	Critical Area Reconnaissance																						
5	Permit Strategy																						
6	Geotechnical Evaluation and Reporting																						
7	Transportation Analysis and Reporting																						
8	ROE's, Real Estate Evaluation and Reporting																						
9	Conceptual Design Alternatives																						
10	Preferred Concept and Phasing																						
11	30% Schematic Design																						
12	Public Outreach Support																						
13	RCO Grant Application Support																						
14	Cultural Resource Survey																						

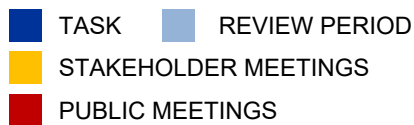


EXHIBIT A-2
Marysville – Lake Stevens Trail Connector
 Fee Summary
 October 2021

Task/Team	MacLeod Reckord	Parametrix	HWA	Transpo	RES Group	WCRA	Subtotal
	trail design	environmental / civil / survey	geotechnical	traffic	R/W services	cultural resource	
PART I - PRELIMINARY DESIGN SERVICES							
1.0 PROJECT MANAGEMENT	21,139.64	11,977.43	4,176.91	5,878.57	784.00		43,956.56
2.0 DATA COLLECTION AND PROGRAMMING	15,819.93	-	-	-	-		15,819.93
3.0 BASE MAP AND ALLOWANCE FOR FIELD SURVEY	1,749.03	22,672.20	-	-	-		24,421.23
4.0 CRITICAL AREA RECONNAISSANCE	3,449.64	30,872.38	-	-	-		34,322.02
5.0 PERMIT STRATEGY	1,482.74	4,835.32	-	-	-		6,318.06
6.0 GEOTECHNICAL EVALUATION AND REPORTING	3,147.04	-	40,061.34	-	-		43,208.38
7.0 TRANSPORTATION ANALYSIS AND REPORTING	4,212.19	-	-	18,362.16	-		22,574.35
8.0 RIGHTS OF ENTRY, REAL ESTATE EVALUATION, AND REPORTING	4,036.68	-	-	-	18,816.04		22,852.72
9.0 CONCEPTUAL DESIGN ALTERNATIVES	27,367.14	13,447.99	-	-	-		40,815.13
10.0 PREFERRED CONCEPT AND PHASING	14,827.40	-	-	-	-		14,827.40
11.0 30% SCHEMATIC DESIGN	80,358.46	58,319.49	-	24,712.01	-		163,389.95
12.0 PUBLIC OUTREACH SUPPORT	21,569.33	-	-	-	-		21,569.33
13.0 GRANT APPLICATION SUPPORT	10,808.87	-	-	-	-		10,808.87
14.0 CULTURAL RESOURCE SURVEY	1,331.44					8,851.12	10,182.56
Subtotal	211,299.53	142,124.81	44,238.26	48,952.73	19,600.04	8,851.12	475,066.50
Direct Expenses	2,300.00	1,449.00	8,994.69	7,650.00			20,393.69
Total	213,599.53	143,573.81	53,232.95	56,602.73	19,600.04	8,851.12	\$ 495,460.19

City of Marysville
Marysville – Lake Stevens Trail Connector
 MacLeod Reckord
 October 2021

		Personnel and Salary Cost						
		Principal	Associate	LA 3	Land Des	CAD	Admin	SUBTOTAL
		\$151.30	\$121.04	\$105.91	\$90.78	\$87.75	\$96.83	Fully Burdened Rate
Task	SCOPE OF WORK	\$50.00	\$40.00	\$35.00	\$30.00	\$29.00	\$32.00	Hourly Rate
PART I - PRELIMINARY DESIGN SERVICES								
1.0	PROJECT MANAGEMENT							
1.1	Coordination and Review	24	16					\$ 5,567.84
1.2	Coordination Meetings	30	14					\$ 6,233.56
1.3	Document Management		6			14		\$ 1,954.80
1.4	Project Schedule	4	4				1	\$ 1,186.19
1.5	Subconsultant Management	2	8					\$ 1,270.92
1.6	Quality Assurance / Quality Control	16	8			4		\$ 3,740.14
1.7	Invoicing	4					6	\$ 1,186.19
	Subtotal:	80	56	0	0	18	7	\$ 21,139.64
2.0	DATA COLLECTION AND PROGRAMMING							
2.1	Data Research and Assembly	8	16		4	4		\$ 3,861.18
2.2	Site Reconnaissance and Base Map Verification	16	24	24		4		\$ 8,218.62
2.3	Program Assessment and Opportunities / Constraints	4	16	8		4		\$ 3,740.14
	Subtotal:	28	56	32	4	12	0	\$ 15,819.93
3.0	BASE MAP AND ALLOWANCE FOR FIELD SURVEY							
3.1	Base Map Development	2	4			2		\$ 962.27
3.2	Field Survey Contingency	2	4					\$ 786.76
	Subtotal:	4	8	0	0	2	0	\$ 1,749.03
4.0	CRITICAL AREA RECONNAISSANCE							
4.1	Critical Area Mapping	2	4					\$ 786.76
4.2	Geohazard Mapping	2	2					\$ 544.68
4.3	On-Site Reconnaissance-Level Investigation	1	2					\$ 393.38
4.4	Technical Memorandum	2	2					\$ 544.68
4.5	Type, Size, and Location Evaluation (OHV, bank measurement, etc.)	1	2					\$ 393.38
4.6	Critical Areas Mapping Contingency	2	4					\$ 786.76
	Subtotal:	10	16	0	0	0	0	\$ 3,449.64
5.0	PERMIT STRATEGY							
5.1	Permit Strategy	4	4					\$ 1,089.36
5.2	Permit Matrix	1	2					\$ 393.38
	Subtotal:	5	6	0	0	0	0	\$ 1,482.74
6.0	GEOTECHNICAL EVALUATION AND REPORTING							
6.1	Geotechnical Evaluation and Reporting	2	4					\$ 786.76
6.2	Test Pits	2	4					\$ 786.76
6.3	Geotechnical Recommendations	4	8					\$ 1,573.52
	Subtotal:	8	16	0	0	0	0	\$ 3,147.04
7.0	TRANSPORTATION ANALYSIS AND REPORTING							
7.1	Crossing Assessment and Reporting	4	24			8		\$ 4,212.19
	Subtotal:	4	24	0	0	8	0	\$ 4,212.19
8.0	RIGHTS OF ENTRY, REAL ESTATE EVALUATION, AND REPORTING							
8.1	Rights of Entry	4	4				2	\$ 1,283.02
8.2	Property Ownership Assessment	1	2					\$ 393.38
8.3	Perform Feasibility and Evaluation	4	8					\$ 1,573.52
8.4	Review Title Reports	1	2					\$ 393.38
8.5	Property / Easement Costs	1	2					\$ 393.38
	Subtotal:	11	18	0	0	0	2	\$ 4,036.68
9.0	CONCEPTUAL DESIGN ALTERNATIVES							
9.1	Conceptual Trail Alignment Alternatives	24	72	48		48		\$ 21,641.95
9.2	Planning Level Cost Opinions	6	24	8	4	8		\$ 5,725.19
	Subtotal:	30	96	56	4	56	0	\$ 27,367.14
10.0	PREFERRED CONCEPT AND PHASING							
10.1	Preferred Trail Alignment Concept	12	32	24		24		\$ 10,336.82
10.2	Phasing	4	4					\$ 1,089.36
10.3	Planning Level Cost Opinion	4	12	6	2	6		\$ 3,401.22
	Subtotal:	20	48	30	2	30	0	\$ 14,827.40

City of Marysville
Marysville – Lake Stevens Trail Connector
MacLeod Reckord
 October 2021

		Personnel and Salary Cost						
		Principal	Associate	LA 3	Land Des	CAD	Admin	SUBTOTAL
		\$151.30	\$121.04	\$105.91	\$90.78	\$87.75	\$96.83	Fully Burdened Rate
Task	SCOPE OF WORK	\$50.00	\$40.00	\$35.00	\$30.00	\$29.00	\$32.00	Hourly Rate
11.0	30% SCHEMATIC DESIGN							
11.1	Trail Alignment Plan and Profile	70	140	70		140		\$ 47,235.86
11.2	Access Improvement Plan	20	40	20		40		\$ 13,495.96
11.3	Drainage Plan	2	4			2		\$ 962.27
11.4	Utility Plan, Details, and Notes	2	4			4		\$ 1,137.78
11.5	Structural Plan, Details, Notes, and Schedules (Walls)	2	8			4		\$ 1,621.94
11.6	Crossing Plan	2	8			4		\$ 1,621.94
11.7	Electrical Service	1	1					\$ 272.34
11.8	Planting Plan	2	4	4		16		\$ 2,614.46
11.9	Ground Disturbance Compiled File	1	4			8		\$ 1,337.49
11.10	Critical Areas Impact Restoration and Mitigation Memo	4	4					\$ 1,089.36
11.11	30% Level Cost Opinion	4	16	8	4	8		\$ 4,454.27
11.12	Illustrative Graphics for Online Posting	4	8	16		8		\$ 3,970.11
11.13	Review / Approval	2	2					\$ 544.68
	Subtotal:	116	243	118	4	234	0	\$ 80,358.46
12.0	PUBLIC OUTREACH SUPPORT							
12.1	Public Outreach Plan	2	4					\$ 786.76
12.2	Prepare Draft Exhibits for Internal and City Review	4	24	12		6		\$ 5,307.60
12.3	Property Owners / Targeted Stakeholder Meetings	8	16	8				\$ 3,994.32
12.4	Public Outreach Meetings	8	16	8				\$ 3,994.32
12.5	Online Distribution	8	24	12		6		\$ 5,912.80
12.6	Public Outreach Summary	4	8					\$ 1,573.52
	Subtotal:	34	92	40	0	12	0	\$ 21,569.33
13.0	GRANT APPLICATION SUPPORT							
13.1	Preparatory Meetings	8	8					\$ 2,178.72
13.2	Initial Letter and Application	2	4					\$ 786.76
13.3	PowerPoint Presentation	4	40	16		8		\$ 7,843.39
	Subtotal:	14	52	16	0	8	0	\$ 10,808.87
14.0	CULTURAL RESOURCE SURVEY							
14.1	Desktop Review	1	1					\$ 272.34
14.2	Desktop Review Memo	1	1					\$ 272.34
14.3	Team Coordination	2	4					\$ 786.76
	Subtotal:	4	6	0	0	0	0	\$ 1,331.44
	Total	368	737	292	14	380	9	
		SUBTOTAL:						\$ 211,299.53
Reimbursables	(mileage, courier, copies)							\$ 2,300.00
		TOTAL:						\$ 213,599.53

Prepared by:
 Date:

City of Marysville
Marysville – Lake Stevens Trail Connector
PARAMETRIX
 October 2021

	Personnel and Salary Cost																				SUBTOTAL		
	Environmental Team						Civil Team						Survey						Admin				
	Benn Burke	Steve Krueger	Josh Wozniak	Adam Merrill	Amanda Weiss	Alyssa Worsham	Jenna Anderson	Yammie Ho	Spencer Ogden	Nicole Nagao	Paul Fendt	Butch Purganan	Luke Miller	Steven Sharpe	Griffin Harger	Theo McJunkin	Ty Walcker	James Martin	Alan Desplanches	Shanon Harris	Lori Gilbertson		
Task	\$252.89	\$176.13	\$207.00	\$161.17	\$91.50	\$118.28	\$197.60	\$200.44	\$137.39	\$128.50	\$272.67	\$156.93	\$181.29	\$127.62	\$132.02	\$113.27	\$71.75	\$110.40	\$87.07	\$124.41	\$130.21	Fully Burdened Rate	
Task	\$82.83	\$57.69	\$67.80	\$52.79	\$29.97	\$38.74	\$64.72	\$65.65	\$45.00	\$42.09	\$89.31	\$51.40	\$59.38	\$41.80	\$43.24	\$37.10	\$23.50	\$36.16	\$28.52	\$40.75	\$42.65	Hourly Rate	
PART I - PRELIMINARY DESIGN SERVICES																							
1.0 PROJECT MANAGEMENT																							
1.2	8						12															\$ 4,394.27	
1.7	12																			24	12	\$ 7,583.17	
	20	0	0	0	0	0	12	0	0	0	0	0	0	0	0	0	0	0	0	24	12	\$ 11,977.43	
2.0 DATA COLLECTION AND PROGRAMMING																							
Subtotal: 0 \$ -																							
3.0 BASE MAP AND ALLOWANCE FOR FIELD SURVEY																							
3.1												24	8	60								\$ 12,873.82	
3.2												4	24			30				30		\$ 9,798.37	
	0	0	0	0	0	0	0	0	0	0	0	24	12	84	0	30	0	0	0	30	0	\$ 22,672.20	
4.0 CRITICAL AREA RECONNAISSANCE																							
4.1	4					2								4								\$ 1,758.59	
4.2						2								4								\$ 747.03	
4.3		10			12																	\$ 2,859.35	
4.4	0.5	2			8																	\$ 1,210.72	
4.5		12			12							4	30		70				20			\$ 17,435.77	
4.6		16		16	16																	\$ 6,860.93	
	4.5	40	0	16	48	4	0	0	0	0	0	4	38	0	70	0	0	0	20	0	0	\$ 30,872.38	
5.0 PERMIT STRATEGY																							
5.1	8		2			4																\$ 2,910.21	
5.2	2					12																\$ 1,925.10	
	10	0	2	0	0	16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$ 4,835.32	
6.0 GEOTECHNICAL EVALUATION AND REPORTING																							
Subtotal: 0 \$ -																							
7.0 TRANSPORTATION ANALYSIS AND REPORTING																							
Subtotal: 0 \$ -																							
8.0 RIGHTS OF ENTRY, REAL ESTATE EVALUATION, AND REPORTING																							
Subtotal: 0 \$ -																							
9.0 CONCEPTUAL DESIGN ALTERNATIVES																							
9.1	8					8	8	12	8													\$ 7,884.08	
9.2	4					4	8	8	4	2												\$ 5,563.91	
	12	0	0	0	0	12	16	20	12	2	0	0	0	0	0	0	0	0	0	0	0	\$ 13,447.99	
10.0 PREFERRED CONCEPT AND PHASING																							
Subtotal: 0 \$ -																							
11.0 30% SCHEMATIC DESIGN																							
11.1						8	8	24				8										\$ 7,737.04	
11.2																						\$ -	
11.3						4	8		80	8	12											\$ 16,738.80	
11.4						40	4	24			8											\$ 13,258.39	
11.5						8	8	8														\$ 4,283.38	
11.6																						\$ -	
11.7						6	2	8														\$ 2,685.57	
11.8																						\$ -	
11.9						8	4	16	4		8											\$ 6,350.20	
11.10	4	2	2		12																	\$ 2,875.84	
11.11	2					2	8	8	4	1												\$ 4,390.27	
11.12																						\$ -	
11.13																						\$ -	
	6	2	2	0	12	0	76	42	88	88	9	36	0	0	0	0	0	0	0	0	0	\$ 58,319.49	
12.0 PUBLIC OUTREACH SUPPORT																							
Subtotal: 0 \$ -																							
13.0 GRANT APPLICATION SUPPORT																							
Subtotal: 0 \$ -																							
Total																							
	53	42	4	16	60	20	100	58	108	100	11	60	16	122	0	100	0	0	50	24	12	\$ 142,124.81	
Reimbursables																						(mileage, courier, copies)	\$ 1,449.00
																						TOTAL: \$143,573.81	

Prepared by: Benn Burke
 Date: October 7, 2021

City of Marysville
Marysville – Lake Stevens Trail Connector
HWA GeoSciences
 October 2021

		Personnel and Salary Cost							
		Principal IX	Geotech Engr VII	Geotech Engr IV	Geologist VI	Geotech Engr II	Controller/Admin	CAD	SUBTOTAL
		286.37	229.00	151.14	134.50	112.97	119.08	116.03	Fully Burdened Rates
Task	SCOPE OF WORK	\$93.79	\$75.00	\$49.50	\$44.05	\$37.00	\$39.00	\$38.00	Hourly Rates
PART I - PRELIMINARY DESIGN SERVICES									
1.0 PROJECT MANAGEMENT									
1.2	Coordination Meetings								\$ -
1.7	Invoicing		12				12		\$ 4,176.91
Subtotal:		0	12	0	0	0	12	0	\$ 4,176.91
2.0 DATA COLLECTION AND PROGRAMMING									
Subtotal:		0	0	0	0	0	0	0	\$ -
3.0 BASE MAP AND ALLOWANCE FOR FIELD SURVEY									
Subtotal:		0	0	0	0	0	0	0	\$ -
4.0 CRITICAL AREA RECONNAISSANCE									
Subtotal:		0	0	0	0	0	0	0	\$ -
5.0 PERMIT STRATEGY									
Subtotal:		0	0	0	0	0	0	0	\$ -
6.0 GEOTECHNICAL EVALUATION AND REPORTING									
6.1	Geotechnical Evaluation and Reporting	1	26	42		14		2	\$ 14,401.77
6.2	Test Pits		2	12	46			2	\$ 8,690.61
6.3	Geotechnical Recommendations	2	24	48	0	24	2	6	\$ 16,968.96
Subtotal:		3	52	102	46	38	2	10	\$ 40,061.34
7.0 TRANSPORTATION ANALYSIS AND REPORTING									
Subtotal:		0	0	0	0	0	0	0	\$ -
8.0 RIGHTS OF ENTRY, REAL ESTATE EVALUATION, AND REPORTING									
Subtotal:		0	0	0	0	0	0	0	\$ -
9.0 CONCEPTUAL DESIGN ALTERNATIVES									
Subtotal:		0	0	0	0	0	0	0	\$ -
10.0 PREFERRED CONCEPT AND PHASING									
Subtotal:		0	0	0	0	0	0	0	\$ -
11.0 30% SCHEMATIC DESIGN									
Subtotal:		0	0	0	0	0	0	0	\$ -
12.0 PUBLIC OUTREACH SUPPORT									
Subtotal:		0	0	0	0	0	0	0	\$ -
13.0 GRANT APPLICATION SUPPORT									
Subtotal:		0	0	0	0	0	0	0	\$ -
Total		3	64	102	46	38	14	10	
								TOTAL DIRECT SALARY COST:	\$ 44,238.26
Reimbursables		(mileage, courier, copies)							\$ 8,994.69
								TOTAL:	\$ 53,232.95

Prepared by: JoLyn Gillie
 Date: 10/6/2021

City of Marysville

Marysville to Lake Stevens Trail Connection

Transpo Group USA, Inc.

Rev. 10/18/2021

		Personnel and Direct Salary Cost				SUBTOTAL
		Principal	Project Manager	Project Engineer	Admin	
		\$252.03	\$153.83	\$117.83	\$93.62	Fully Burdened Rate
Task	SCOPE OF WORK	\$92.55	\$56.49	\$43.27	\$34.38	Hourly Rate
PART I - PRELIMINARY DESIGN SERVICES						
1.0	PROJECT MANAGEMENT					
1.2	Coordination Meetings		16	8		\$ 3,404.00
1.7	Invoicing - <i>assume 20-month schedule</i>		10		10	\$ 2,474.57
	Subtotal:	0	26	8	10	\$ 5,878.57
2.0	DATA COLLECTION AND PROGRAMMING					
	Subtotal:	0	0	0	0	\$ -
3.0	BASE MAP AND ALLOWANCE FOR FIELD SURVEY					
	Subtotal:	0	0	0	0	\$ -
4.0	CRITICAL AREA RECONNAISSANCE					
	Subtotal:	0	0	0	0	\$ -
5.0	PERMIT STRATEGY					
	Subtotal:	0	0	0	0	\$ -
6.0	GEOTECHNICAL EVALUATION AND REPORTING					
	Subtotal:	0	0	0	0	\$ -
7.0	TRANSPORTATION ANALYSIS AND REPORTING					
7.1	Crossing Assessment for Conceptual Design Alternatives	6	36	96		\$ 18,362.16
	<i>assume 15 crossing locations, provide memo and costs (no design drawings)</i>					\$ -
	Subtotal:	6	36	96	0	\$ 18,362.16
8.0	RIGHTS OF ENTRY, REAL ESTATE EVALUATION, AND REPORTING					
	Subtotal:	0	0	0	0	\$ -
9.0	CONCEPTUAL DESIGN ALTERNATIVES					
	Subtotal:	0	0	0	0	\$ -
10.0	PREFERRED CONCEPT AND PHASING					
	Subtotal:	0	0	0	0	\$ -
11.0	30% SCHEMATIC DESIGN					
11.1	Trail Alignment Plan and Profile					\$ -
11.2	Access Improvement Plan					\$ -
11.3	Drainage Plan					\$ -
11.4	Utility Plan, Details, and Notes					\$ -
11.5	Structural Plan, Details, Notes, and Schedules (Walls)					\$ -
11.6	Crossing Plan - <i>assume design for 15 crossings, coordination for 3 additional crossings south of 8th St</i>	1	36	132		\$ 21,343.98
11.7	Electrical Service					\$ -
11.8	Planting Plan					\$ -
11.9	Ground Disturbance Compiled File					\$ -
11.10	Critical Areas Impact Restoration and Mitigation Memo					\$ -
11.11	30% Level Cost Opinion - <i>assume 15 crossings</i>	1	8	16		\$ 3,368.03
11.12	Illustrative Graphics for Online Posting					\$ -
11.13	Review / Approval					\$ -
	Subtotal:	2	44	148	0	\$ 24,712.01
12.0	PUBLIC OUTREACH SUPPORT					
	Subtotal:	0	0	0	0	\$ -
13.0	GRANT APPLICATION SUPPORT					
	Subtotal:	0	0	0	0	\$ -
Total		8	106	252	10	
					SUBTOTAL	\$ 48,952.73
Reimbursables		(mileage, courier, copies)				\$ 7,650.00
					TOTAL	\$ 56,602.73

Prepared by: Jennifer Palmer, Transpo Group

Date: 10/18/2021

City of Marysville
Marysville – Lake Stevens Trail Connector
RES Group Northwest
 October 2021

		Personnel and Salary Cost	
		ROW LEAD	SUBTOTAL
		130.67	Fully Burdened Rate
Task	SCOPE OF WORK	\$69.50	Hourly Rate
PART I - PRELIMINARY DESIGN SERVICES			
1.0	PROJECT MANAGEMENT		
1.2	Coordination Meetings		\$ -
1.7	Invoicing	6	\$ 784.00
	Subtotal:	6	\$ 784.00
2.0	DATA COLLECTION AND PROGRAMMING		
	Subtotal:	0	\$ -
3.0	BASE MAP AND ALLOWANCE FOR FIELD SURVEY		
	Subtotal:	0	\$ -
4.0	CRITICAL AREA RECONNAISSANCE		
	Subtotal:	0	\$ -
5.0	PERMIT STRATEGY		
	Subtotal:	0	\$ -
6.0	GEOTECHNICAL EVALUATION AND REPORTING		
	Subtotal:	0	\$ -
7.0	TRANSPORTATION ANALYSIS AND REPORTING		
	Subtotal:	0	\$ -
8.0	RIGHTS OF ENTRY, REAL ESTATE EVALUATION, AND REPORTING		
8.1	Rights of Entry	60	\$ 7,840.02
8.2	Property Ownership Assessment	24	\$ 3,136.01
8.3	Perform Feasibility and Evaluation	24	\$ 3,136.01
8.4	Review Title Reports	12	\$ 1,568.00
8.5	Property / Easement Costs	24	\$ 3,136.01
	Subtotal:	144	\$ 18,816.04
9.0	CONCEPTUAL DESIGN ALTERNATIVES		
	Subtotal:	0	\$ -
10.0	PREFERRED CONCEPT AND PHASING		
	Subtotal:	0	\$ -
11.0	30% SCHEMATIC DESIGN		
	Subtotal:	0	\$ -
12.0	PUBLIC OUTREACH SUPPORT		
	Subtotal:	0	\$ -
13.0	GRANT APPLICATION SUPPORT		
	Subtotal:	0	\$ -
	Total	150	
		SUBTOTAL	\$ 19,600.04
Reimbursables	(mileage, courier, copies)		
		TOTAL:	\$ 19,600.04

Prepared by: Kristina Guzman
 Date: 10/6/2021

City of Marysville
Marysville – Lake Stevens Trail Connector
 Willamette CRA
 October 2021

		Personnel and Salary Cost				
		CR Lead	Architectural Historian	Archaeologist	GIS	SUBTOTAL
		\$159.38	\$119.54	\$90.32	\$92.97	<i>Fully Burdened Rate</i>
Task	SCOPE OF WORK	\$60.00	\$45.00	\$34.00	\$35.00	<i>Hourly Rate</i>
PART I - PRELIMINARY DESIGN SERVICES						
1.0	PROJECT MANAGEMENT					
	Subtotal:	0	0	0	0	\$ -
2.0	DATA COLLECTION AND PROGRAMMING					
	Subtotal:	0	0	0	0	\$ -
3.0	BASE MAP AND ALLOWANCE FOR FIELD SURVEY					
	Subtotal:	0	0	0	0	\$ -
4.0	CRITICAL AREA RECONNAISSANCE					
	Subtotal:	0	0	0	0	\$ -
5.0	PERMIT STRATEGY					
	Subtotal:	0	0	0	0	\$ -
6.0	GEOTECHNICAL EVALUATION AND REPORTING					
	Subtotal:	0	0	0	0	\$ -
7.0	TRANSPORTATION ANALYSIS AND REPORTING					
	Subtotal:	0	0	0	0	\$ -
8.0	RIGHTS OF ENTRY, REAL ESTATE EVALUATION, AND REPORTING					
	Subtotal:	0	0	0	0	\$ -
9.0	CONCEPTUAL DESIGN ALTERNATIVES					
	Subtotal:	0	0	0	0	\$ -
10.0	PREFERRED CONCEPT AND PHASING					
	Subtotal:	0	0	0	0	\$ -
11.0	30% SCHEMATIC DESIGN					
	Subtotal:	0	0	0	0	\$ -
12.0	PUBLIC OUTREACH SUPPORT					
	Subtotal:	0	0	0	0	\$ -
13.0	GRANT APPLICATION SUPPORT					
	Subtotal:	0	0	0	0	\$ -
14.0	CULTURAL RESOURCE SURVEY					
14.1	Desktop Review	2	12	12		\$ 2,837.04
14.2	Desktop Review Memo	4	16	16	8	\$ 4,739.02
14.3	Team Coordination	8				\$ 1,275.07
14.4						\$ -
14.5						\$ -
	Subtotal:	14	28	28	8	\$ 8,851.12
Total		14	28	28	8	
					SUBTOTAL	\$ 8,851.12
Reimbursables		(mileage, courier, copies)				
					TOTAL	\$ 8,851.12

Prepared by: Paula Johnson, WillametteCRA
 Date: 10/7/2021

EXHIBIT B
Subcontractors/Subconsultants

Below is a list of approved subcontractors/subconsultants. If left blank, there are no approved subcontractors or subconsultants.

Parametrix

Transpo Group

RES Group NW


HWA GeoSciences

Willamette CRA

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: November 08, 2021

AGENDA ITEM:	
Grant Agreement with Washington State Department of Commerce for Preliminary Design of the Marysville to Lake Stevens Connector Trail	
PREPARED BY:	DIRECTOR APPROVAL:
Steven Miller, Senior Project Manager	
DEPARTMENT:	
Engineering and Transportation Services	
ATTACHMENTS:	
Contract	
BUDGET CODE:	AMOUNT:
31000076.563000	\$504,700.00
SUMMARY:	
<p>On June 21, 2021, the City received confirmation from the Department of Commerce that an appropriation had been included in the 2021-2023 State Capital Budget to provide a new award of \$504,700 for the Marysville to Lake Stevens Connector Trail project. In the following months, City staff advertised a request for proposals and identified a recommended consultant to provide preliminary design services. City staff have also coordinated with Commerce, DAHP, and tribal agencies, to meet cultural resource requirements in accordance with Executive Order 21-01. With preliminary coordination completed, and with a consultant team selected for approval, Council is requested to review and consider for approval the attached grant agreement to fund the preliminary design for the Marysville to Lake Stevens Connector Trail.</p>	

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign and execute the grant agreement between the City of Marysville and the Washington State Department of Commerce, in the amount of \$504,700.

RECOMMENDED MOTION:

I move to authorize the Mayor to sign and execute the agreement with the Department of Commerce.



DRAFT

Grant to

City of Marysville

through

The 2022 Local & Community Projects Program

For

Marysville Trail Connector (Marysville) - Preliminary design

Start date: 7/1/2021

Face Sheet 1

Special Terms and Conditions 2

 1. Grant Management 2

 2. Compensation 2

 3. Certification of Funds Performance Measures 2

 4. Prevailing Wage Law 3

 5. Documentation and Security 3

 6. Basis for Establishing Real Property Values for Acquisitions of Real Property 4

 7. Expenditures Eligible for Reimbursement 4

 8. Billing Procedures and Payment 4

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 10. Insurance 5

 11. Order of Precedence 6

 12. Reduction in Funds 7

 13. Ownership of Project/Capital Facilities 7

 14. Change of Ownership or Use for GRANTEE-Owned Property 7

 15. Change of Use for Leased Property Performance Measure 7

 16. Modification to the Project Budget 8

 17. Signage, Markers and Publications 8

 18. Historical and Cultural Artifacts 8

 19. Reappropriation 9

 20. Termination for Fraud or Misrepresentation 9

General Terms and Conditions 1

 1. Definitions 1

 2. Access to Data 1

 3. Advance Payments Prohibited 1

 4. All Writings Contained Herein 1

 5. Amendments 1

 6. Americans with Disabilities Act (ADA) 2

 7. Assignment 2

 8. Attorney’s Fees 2

 9. Audit 2

 10. Breaches of Other State Contracts 3

 11. Confidentiality/Safeguarding of Information 3

 12. Conflict of Interest 3

 13. Copyright Provision 4

 14. Disputes 4

 15. Duplicate Payment 5

 16. Governing Law and Venue 5

 17. Indemnification 5

 18. Independent Capacity of the Grantee 5

 19. Industrial Insurance Coverage 6

 20. Laws 6

 21. Licensing, Accreditation and Registration 6

 22. Limitation of Authority 6

 23. Noncompliance with Nondiscrimination Laws 6

 24. Pay Equity 6

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 27. Recapture 7

 28. Records Maintenance 7

29.	Registration with Department of Revenue	7
30.	Right of Inspection.....	8
31.	Savings.....	8
32.	Severability	8
33.	Site Security.....	8
34.	Subgranting/Subcontracting	8
35.	Survival.....	8
36.	Taxes.....	8
37.	Termination for Cause	9
38.	Termination for Convenience	9
39.	Termination Procedures.....	9
40.	Treatment of Assets.....	10
41.	Waiver	10

Attachment A, Scope of Work; Attachment B, Budget; Attachment C, Availability of Funds;
Attachment D Certification of Prevailing Wages; Attachment E, Certification of LEED

FACE SHEET

**Washington State Department of Commerce
Local Government Division
Community Capital Facilities Unit**

1. GRANTEE City of Marysville 1049 State Avenue Marysville, Washington 98270		2. GRANTEE Doing Business As (optional)					
3. Grantee Representative Steve Miller (360) 363-8285 smiller@marysvillewa.gov		4. COMMERCE Representative Emily Hafford Project Manager (360) 764-0118 Fax 360-586-5880 emily.hafford@commerce.wa.gov <div style="float: right; text-align: right;"> P.O. Box 42525 1011 Plum Street SE Olympia, WA 98504-2525 </div>					
5. Grant Amount \$504,700.00	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date 7/1/2021	8. End Date 6/30/2025, contingent on reappropriation, 6/30/2023 if funds are not reappropriated				
9. Federal Funds (as applicable) N/A		<table style="width:100%; border: none;"> <tr> <td style="text-align: center; border: none;"><u>Federal Agency</u></td> <td style="text-align: center; border: none;"><u>CFDA Number</u></td> </tr> <tr> <td style="text-align: center; border: none;">N/A</td> <td style="text-align: center; border: none;">N/A</td> </tr> </table>		<u>Federal Agency</u>	<u>CFDA Number</u>	N/A	N/A
<u>Federal Agency</u>	<u>CFDA Number</u>						
N/A	N/A						
10. Tax ID # 91-6001459	11. SWV # SWV0000432	12. UBI # 314-000-001	13. DUNS # N/A				
14. Grant Purpose The outcome of this performance-based contract is for pre-construction activities related to the Marysville Trail Connector project, as referenced in Attachment A – Scope of Work.							
COMMERCE, defined as the Department of Commerce, and the GRANTEE, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grant Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Budget, Attachment “C” – Certification of Availability of Funds to Complete the Project, Attachment “D” – Certification of the Payment and Reporting of Prevailing Wages, Attachment “E” – Certification of Intent to Enter LEED process.							
FOR GRANTEE <hr/> Jon Nehring, Mayor <hr/> Date		FOR COMMERCE <hr/> Mark K. Barkley, Assistant Director <hr/> Date APPROVED AS TO FORM <hr/> <hr/> Date					

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

THIS CONTRACT, entered into by and between City of Marysville (a Unit of Local Government hereinafter referred to as the GRANTEE), and the Washington State Department of Commerce (hereinafter referred to as COMMERCE), WITNESSES THAT:

WHEREAS, COMMERCE has the statutory authority under RCW 43.330.050 (5) to cooperate with and provide assistance to local governments, businesses, and community-based organizations; and

WHEREAS, COMMERCE is also given the responsibility to administer state funds and programs which are assigned to COMMERCE by the Governor or the Washington State Legislature; and

WHEREAS, the Washington State Legislature has, in Laws of 2021, Chapter 332, Section 1075, made an appropriation to support the 2022 Local & Community Projects Program, and directed COMMERCE to administer those funds; and

WHEREAS, the enabling legislation also stipulates that the GRANTEE is eligible to receive funding for acquisition, construction, or rehabilitation (a venture hereinafter referred to as the "Project").

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the GRANTEE and their contact information are identified on the Face Sheet of this Grant.

2. COMPENSATION

COMMERCE shall pay an amount not to exceed \$504,700.00 for the capital costs necessary for or incidental to the performance of work as set forth in the Scope of Work.

3. CERTIFICATION OF FUNDS PERFORMANCE MEASURES

A. The release of state funds under this contract is contingent upon the GRANTEE certifying that it has expended or has access to funds from non-state sources as set forth in ATTACHMENT C (CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT), hereof. Such non-state sources may consist of a combination of any of the following:

- i) Eligible Project expenditures prior to the execution of this contract.
- ii) Cash dedicated to the Project.
- iii) Funds available through a letter of credit or other binding loan commitment(s).
- iv) Pledges from foundations or corporations.
- v) Pledges from individual donors.

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
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- vi) The value of real property when acquired solely for the purposes of this Project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or a current property tax statement. COMMERCE will not consider appraisals for prospective values of such property for the purposes of calculating the amount of non-state matching fund credit.
- vii) In-kind contributions, subject to COMMERCE'S approval.

- B.** The GRANTEE shall maintain records sufficient to evidence that it has access to or has expended funds from such non-state sources, and shall make such records available for COMMERCE'S review upon reasonable request.

4. PREVAILING WAGE LAW

The Project funded under this Grant may be subject to state prevailing wage law (Chapter 39.12 RCW). The GRANTEE is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. COMMERCE is not responsible for determining whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

5. DOCUMENTATION AND SECURITY

The provisions of this section shall apply to capital projects performed by nonprofit organizations and public benefit corporations that involve the expenditure of over \$500,000 in state funds. Projects for which the grant award or legislative intent documents specify that the state funding is to be used for design only are exempt from this section.

- A. Deed of Trust.** This Grant shall be evidenced by a promissory note and secured by a deed of trust or other appropriate security instrument in favor of COMMERCE (the "Deed of Trust"). The Deed of Trust shall be recorded in the County where the Project is located, and the original returned to COMMERCE after recordation within ninety (90) days of contract execution. The Deed of Trust must be recorded before COMMERCE will reimburse the GRANTEE for any Project costs. The amount secured by the Deed of Trust shall be the amount of the grant as set forth in Section 2, hereof.
- B. Term of Deed of Trust.** The Deed of Trust shall remain in full force and effect for a period of ten (10) years following the final payment of state funds to the GRANTEE under this grant. Upon satisfaction of the ten-year term requirement and all other grant terms and conditions, COMMERCE shall, upon written request of the GRANTEE, take appropriate action to reconvey the Deed of Trust.
- C. Title Insurance.** The GRANTEE shall purchase an extended coverage lender's policy of title insurance insuring the lien position of the Deed of Trust in an amount not less than the amount of the grant.
- D. Covenant.** If the project will be partially funded by a loan and the term of said loan is less than the commitment period under this grant contract, COMMERCE may require that GRANTEE record or cause to be recorded a covenant in a superior lien position ahead of the lender's security instrument that restricts use of the facility or property for the purpose(s) stated elsewhere in this contract for at least the term of the commitment period
- E. Subordination.** COMMERCE may agree to subordinate its deed of trust upon request from a private or public lender. Any such request shall be submitted to COMMERCE in writing, and

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
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COMMERCE shall respond to the request in writing within thirty (30) days of receiving the request.

6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When the grant is used to fund the acquisition of real property, the value of the real property eligible for reimbursement under this grant shall be established as follows:

- a. GRANTEE purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- b. GRANTEE purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

7. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

The GRANTEE may be reimbursed, at the rate set forth elsewhere in this contract, for Project expenditures in the following cost categories:

- A. Real property, and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the Project;
- B. Design, engineering, architectural, and planning;
- C. Construction management and observation (from external sources only);
- D. Construction costs including, but not limited to, the following:
 - Site preparation and improvements;
 - Permits and fees;
 - Labor and materials;
 - Taxes on Project goods and services;
 - Capitalized equipment;
 - Information technology infrastructure; and
 - Landscaping.

8. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the GRANTEE for one-hundred percent (100%) of eligible Project expenditures, up to the maximum payable under this contract. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed – by budget line item – for the billing period.

The GRANTEE shall evidence the costs claimed on each voucher by including copies of each invoice received from vendors providing Project goods or services covered by the contract. The GRANTEE shall also provide COMMERCE with a copy of the cancelled check or electronic funds transfer, as applicable, that confirms that they have paid each expenditure being claimed. The cancelled checks or electronic funds transfers may be submitted to COMMERCE at the time the voucher is initially submitted, or within thirty (30) days thereafter.

The voucher must be certified (signed) by an official of the GRANTEE with authority to bind the GRANTEE. The final voucher shall be submitted to COMMERCE within sixty (60) days following the

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

completion of work or other termination of this contract, or within fifteen (15) days following the end of the state biennium unless contract funds are reappropriated by the Legislature in accordance with Section 19, hereof.

If GRANTEE has or will be submitting any of the invoices attached to a request for payment for partial reimbursement under another grant contract, GRANTEE must clearly identify such grant contracts in the transmittal letter and request for payment.

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the GRANTEE.

COMMERCE will pay GRANTEE upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the GRANTEE.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the GRANTEE for services rendered if the GRANTEE fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs

The GRANTEE shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the GRANTEE, if the GRANTEE is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The GRANTEE is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrantees.

9. SUBCONTRACTOR DATA COLLECTION

GRANTEE will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

10. INSURANCE

The GRANTEE shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the GRANTEE, or Subgrantee, or agents of either, while performing under the terms of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. The insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The GRANTEE shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation or modification.

**SPECIAL TERMS AND CONDITIONS
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The GRANTEE shall submit to COMMERCE within fifteen (15) calendar days of the Grant start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, the GRANTEE shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The GRANTEE shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than \$1,000,000 per occurrence. Additionally, the GRANTEE is responsible for ensuring that any Subgrantees provide adequate insurance coverage for the activities arising out of subgrants.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the GRANTEE for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$2,000,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subgrantees that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees pursuant to this paragraph shall name the GRANTEE and the GRANTEE's fiscal agent as beneficiary.
- C. The GRANTEE shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

GRANTEES and Local Governments that Participate in a Self-Insurance Program.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from COMMERCE, the GRANTEE may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the GRANTEE shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. GRANTEE's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

GRANTEE shall provide annually to COMMERCE a summary of coverages and a letter of self insurance, evidencing continued coverage under GRANTEE's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self insurance will be provided on the anniversary of the start date of this Agreement.

11. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

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- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Certification of the Availability of Funds to Complete the Project
- Attachment D – Certification of the Payment and Reporting of Prevailing Wages
- Attachment E – Certification of Intent to Enter the Leadership in Energy and Environmental Design (LEED) Certification Process

12. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this contract are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the contract accordingly.

13. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this contract and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this contract; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this contract. This provision does not extend to claims that COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this contract.

14. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY

- A. The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this contract, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this contract for a period of at least ten (10) years from the date the final payment is made hereunder.
- B. This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this contract.
- C. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 26 (Recapture provision) of the General Terms and Conditions.

15. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A. The GRANTEE understands and agrees that any facility leased by the GRANTEE that is constructed, renovated, or otherwise improved using state funds under this contract shall be used by the GRANTEE for the purpose or purposes stated elsewhere in this contract for a period of at least ten (10) years from the date the final payment is made hereunder.

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- B.** In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 26 (Recapture provision) of the General Terms and Conditions.

16. MODIFICATION TO THE PROJECT BUDGET

- A.** Notwithstanding any other provision of this contract, the GRANTEE may, at its discretion, make modifications to line items in the Project Budget (Attachment B), hereof, that will not increase the line item by more than fifteen percent (15%).
- B.** The GRANTEE shall notify COMMERCE in writing (by email or regular mail) when proposing any budget modification or modifications to a line item in the Project Budget (Attachment B,) hereof, that would increase the line item by more than fifteen percent (15%). Conversely, COMMERCE may initiate the budget modification approval process if presented with a request for payment under this contract that would cause one or more budget line items to exceed the 15 percent (15%) threshold increase described above.
- C.** Any such budget modification or modifications as described above shall require the written approval of COMMERCE (by email or regular mail), and such written approval shall amend the Project Budget. Each party to this contract will retain and make any and all documents related to such budget modifications a part of their respective contract file.
- D.** Nothing in this section shall be construed to permit an increase in the amount of funds available for the Project, as set forth in Section 2 of this contract.

17. SIGNAGE, MARKERS AND PUBLICATIONS

If, during the period covered by this contract, the GRANTEE displays or circulates any communication, publication, or donor recognition identifying the financial participants in the Project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

18. HISTORICAL AND CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Contract, GRANTEE shall cooperate with COMMERCE to complete the requirements of Governor's Executive Order 05-05 or Executive Order 21-02, where applicable, or GRANTEE shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. GRANTEE agrees that the GRANTEE is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, GRANTEE shall, in accordance with Governor's Executive Order 05-05 or Executive Order 21-02 as applicable, coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. GRANTEE agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The GRANTEE agrees that, unless the GRANTEE is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are

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discovered during construction, the GRANTEE shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the GRANTEE shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The GRANTEE shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, GRANTEE agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05 and Executive Order 21-02.

In the event that the GRANTEE finds it necessary to amend the Scope of Work the GRANTEE may be required to re-comply with Governor's Executive Order 05-05, Executive Order 21-02, or Section 106 of the National Historic Preservation Act.

19. REAPPROPRIATION

- A. The parties hereto understand and agree that any state funds not expended by June 30, 2023 will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this contract shall be contingent upon the terms of such reappropriation.
- B. In the event any funds awarded under this contract are reappropriated for use in a future biennium, COMMERCE reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

20. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the GRANTEE commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this contract, COMMERCE reserves the right to terminate or amend this contract accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant.

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1. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "GRANTEE" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the GRANTEE.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subgrantee/subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this Grant under a separate Grant with the GRANTEE. The terms "subgrantee/subcontractor" refers to any tier.
- G. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- H. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

2. ACCESS TO DATA

In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE's reports, including computer models and the methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Grant shall be made by COMMERCE.

4. ALL WRITINGS CONTAINED HEREIN

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

5. AMENDMENTS

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

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6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35

The GRANTEE must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

7. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the GRANTEE without prior written consent of COMMERCE.

8. ATTORNEYS’ FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorneys fees and costs.

9. AUDIT

A. General Requirements

COMMERCE reserves the right to require an audit. If required, GRANTEEs are to procure audit services based on the following guidelines.

The GRANTEE shall maintain its records and accounts so as to facilitate audits and shall ensure that subgrantees also maintain auditable records.

The GRANTEE is responsible for any audit exceptions incurred by its own organization or that of its subgrantees.

COMMERCE reserves the right to recover from the GRANTEE all disallowed costs resulting from the audit.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The GRANTEE must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

In the event an audit is required, if the GRANTEE is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the GRANTEE.

The GRANTEE shall include the above audit requirements in any subcontracts.

In any case, the GRANTEE’s records must be available for review by COMMERCE.

C. Documentation Requirements

The GRANTEE must send a copy of the audit report described above no later than nine (9) months after the end of the GRANTEE’s fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the GRANTEE must include:

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- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

If the GRANTEE is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to COMMERCE; no other report is required.

10. BREACHES OF OTHER STATE CONTRACTS

GRANTEE is expected to comply with all other contracts executed between GRANTEE and the State of Washington. A breach of any other agreement entered into between GRANTEE and the State of Washington may, in COMMERCE's discretion, be deemed a breach of this Agreement.

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the GRANTEE by COMMERCE that is designated as "confidential" by COMMERCE;
2. All material produced by the GRANTEE that is designated as "confidential" by COMMERCE; and
3. All personal information in the possession of the GRANTEE that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The GRANTEE shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The GRANTEE shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The GRANTEE shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the GRANTEE shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The GRANTEE shall make the changes within the time period specified by COMMERCE. Upon request, the GRANTEE shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the GRANTEE against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The GRANTEE shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

12. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the GRANTEE terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this contract.

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Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The GRANTEE and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on this Grant, or any matter related to the project funded under this Grant or any other state funded project, including but not limited to formulating or drafting legislation, participating in grant procurement, planning and execution, awarding grants, or monitoring grants, during the 24 month period preceding the start date of this Grant. Any person identified by the GRANTEE and their subcontractors(s) must be identified individually by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the GRANTEE may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the contract by the GRANTEE. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

13. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the GRANTEE hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the GRANTEE hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The GRANTEE warrants and represents that the GRANTEE has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The GRANTEE shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The GRANTEE shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the GRANTEE with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the GRANTEE.

14. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the GRANTEE's name, address, and Contract number; and

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- be mailed to the Director and the other party's (respondent's) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

15. DUPLICATE PAYMENT

COMMERCE shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

16. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

17. INDEMNIFICATION

To the fullest extent permitted by law, the GRANTEE shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The GRANTEE's obligation to indemnify, defend, and hold harmless includes any claim by GRANTEE's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

GRANTEE expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to GRANTEE'S or any subgrantee's/subcontractor's performance or failure to perform the Grant. GRANTEE'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The GRANTEE waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

18. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The GRANTEE and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The GRANTEE will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the GRANTEE make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the GRANTEE.

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19. INDUSTRIAL INSURANCE COVERAGE

The GRANTEE shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the GRANTEE fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the GRANTEE the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the GRANTEE to the accident fund from the amount payable to the GRANTEE by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the GRANTEE.

20. LAWS

The GRANTEE shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended.

21. LICENSING, ACCREDITATION AND REGISTRATION

The GRANTEE shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

22. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Authorized Representative.

23. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the GRANTEE shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the GRANTEE's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further Grants with COMMERCE. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein. The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

24. PAY EQUITY

The GRANTEE agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- b. GRANTEE may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

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(ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by COMMERCE, if COMMERCE or the Department of Enterprise services determines that the GRANTEE is not in compliance with this provision.

25. POLITICAL ACTIVITIES

Political activity of GRANTEE employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17a RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

26. PUBLICITY

The GRANTEE agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

27. RECAPTURE

In the event that the GRANTEE fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the GRANTEE of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

28. RECORDS MAINTENANCE

The GRANTEE shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant.

GRANTEE shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

29. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the GRANTEE shall complete registration with the Washington State Department of Revenue.

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STATE FUNDS**

30. RIGHT OF INSPECTION

The GRANTEE shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Grant.

31. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

32. SEVERABILITY

The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Grant.

33. SITE SECURITY

While on COMMERCE premises, GRANTEE, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

34. SUBGRANTING/SUBCONTRACTING

Neither the GRANTEE nor any subgrantee/subcontractor shall enter into subgrants/subcontracts for any of the work contemplated under this contract without obtaining prior written approval of COMMERCE. In no event shall the existence of the subgrant/subcontract operate to release or reduce the liability of the GRANTEE to COMMERCE for any breach in the performance of the GRANTEE's duties. This clause does not include Grants of employment between the GRANTEE and personnel assigned to work under this Grant.

Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subgrants/subcontracts. GRANTEE and its subgrantees/subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of COMMERCE or as provided by law.

35. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

36. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the GRANTEE's income or gross receipts, any other taxes, insurance or expenses for the GRANTEE or its staff shall be the sole responsibility of the GRANTEE.

**GENERAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

37. TERMINATION FOR CAUSE

In the event COMMERCE determines the GRANTEE has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this Grant. Before suspending or terminating the Grant, COMMERCE shall notify the GRANTEE in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Grant may be terminated or suspended.

In the event of termination or suspension, the GRANTEE shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Grant, withhold further payments, or prohibit the GRANTEE from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by COMMERCE to terminate the Grant. A termination shall be deemed a "Termination for Convenience" if it is determined that the GRANTEE: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this Grant are not exclusive and are, in addition to any other rights and remedies, provided by law.

38. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, COMMERCE shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

39. TERMINATION PROCEDURES

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this Grant, may require the GRANTEE to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the GRANTEE the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the GRANTEE and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AUTHORIZED REPRESENTATIVE shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Grant. COMMERCE may withhold from any amounts due the GRANTEE such sum as the AUTHORIZED REPRESENTATIVE determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AUTHORIZED REPRESENTATIVE, the GRANTEE shall:

1. Stop work under the Grant on the date, and to the extent specified, in the notice;
2. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;

**GENERAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE, all of the rights, title, and interest of the GRANTEE under the orders and subgrants/subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AUTHORIZED REPRESENTATIVE to the extent AUTHORIZED REPRESENTATIVE may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE any property which, if the Grant had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by the AUTHORIZED REPRESENTATIVE; and
7. Take such action as may be necessary, or as the AUTHORIZED REPRESENTATIVE may direct, for the protection and preservation of the property related to this Grant, which is in the possession of the GRANTEE and in which COMMERCE has or may acquire an interest.

40. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the GRANTEE, for the cost of which the GRANTEE is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the GRANTEE. Title to other property, the cost of which is reimbursable to the GRANTEE under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the GRANTEE shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The GRANTEE shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the GRANTEE or which results from the failure on the part of the GRANTEE to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the GRANTEE shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The GRANTEE shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant

All reference to the GRANTEE under this clause shall also include GRANTEE'S employees, agents or subgrantees/subcontractors.

41. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Scope of Work

Funds awarded under this grant shall be used for pre-construction activities related to the conceptual design and early permitting coordination of the Marysville Trail Connector project.

The design will include, but not be limited to, a base map showing the proposed alignment of the trail, extending south from SR 528/64th Street Northeast in Marysville, to its terminus near 20th Street Northeast in Lake Stevens. Deliverables will also include a cost estimate, a design report, a list of permits required for construction, and right-of-way assessment.

When completed, the trail will provide citizens with recreational opportunities, and alternative transportation routes for bicyclists and pedestrians.

Pre-construction activities are expected to be complete in November, 2023.

All project work completed with prior legislative approval. The "Copyright Provisions", Section 13 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

GRANTEE

TITLE

DATE

Budget

Line Item	Amount
Architecture & Engineering	\$504,700.00
Site Acquisition	\$0.00
Construction	\$0.00
Capitalized Equipment	\$0.00
Other	\$0.00
Total Contracted Amount:	\$504,700.00

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that the Project Budget set forth above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, as of the date and year written below.

GRANTEE

TITLE

DATE

Certification of the Availability of Funds to Complete the Project

Non-State Funds	Amount	Total
Total Non-State Funds	\$0.00	\$0.00
State Funds		
State Capital Budget	\$504,700.00	\$504,700.00
Total Non-State and State Sources		\$504,700.00

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that project funding from sources other than those provided by this contract and identified above has been reviewed and approved by the GRANTEE’s governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this contract, as of the date and year written below. The GRANTEE shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE’S review upon reasonable request.

GRANTEE

TITLE

DATE

Certification of the Payment and Reporting of Prevailing Wages

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as of May 18, 2021, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The GRANTEE shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE'S review upon request.

If any state funds are used by the GRANTEE for the purpose of construction, applicable State Prevailing Wages must be paid.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

GRANTEE

TITLE

DATE

**Certification of Intent to Enter the
Leadership in Energy and Environmental Design (LEED) Certification Process**

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that it will enter into the Leadership in Energy and Environmental Design certification process, as stipulated in RCW 39.35D, as applicable to the Project funded by this contract. The GRANTEE shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to COMMERCE.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, as of the date and year written below.

GRANTEE

TITLE


DATE

Not Applica

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: November 8, 2021

AGENDA ITEM:	
Maplewood Crossing (PA20-064) – Access Agreement	
PREPARED BY:	DIRECTOR APPROVAL:
Ken McIntyre, Development Services Manager	
DEPARTMENT:	
Public Works	
ATTACHMENTS:	
Access Agreement	
BUDGET CODE:	AMOUNT:
N/A	N/A
SUMMARY:	

Keystone Land, LLC is seeking construction plan approval for the plat of Maplewood Crossing, located at 4205 71st Ave NE. There is currently no public sewer available within the project's frontage, so the project proposes a sewer extension through a City-owned parcel located immediately south and east of the site (see Exhibit 'A' in the attached Access Agreement for reference). The City-owned parcel is located at 4123 71st Ave NE, and is occupied by the City's Sunnyside water reservoir. The proposed sewer route extends through the eastern portion of the parcel, around the Sunnyside Well Treatment Facility site and outside of the well-protection zone.

The Public Works Department has reviewed the request, coordinated the proposed route with the applicant and had the access agreement prepared by the City Attorney's office. The access agreement provides the applicant with the ability to construct the sewer connection, requires restoration of the property following construction, indemnifies the City from legal claims related to the sewer construction and requires the contractor to carry insurance.

Public Works recommends that the City Council authorize the Mayor to execute the access agreement.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor execute the access agreement with Keystone Land LLC.

RECOMMENDED MOTION:

I move to authorize the Mayor to sign and execute the agreement.

Access Agreement

This Access Agreement is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (the “City”) and Keystone Land LLC (the “Developer”).

RECITALS

WHEREAS, the Developer is constructing a new development located at a property within the City which has the tax parcel ID 29050200200300, as depicted in **Exhibit A** (the “Project Site”); and

WHEREAS, the City owns and operates the tax parcel ID 29050200206500, as depicted in **Exhibit A** (the “City Parcel”); and

WHEREAS, the Developer desires to construct a sewer main through the City Parcel to service its development;

WHEREAS, the City will allow the Developer to install the sewer main within the City Parcel according to the terms of this Agreement.

NOW, THEREFORE, the City and Developer agree as follows:

AGREEMENT

1. Access. The City, in consideration of the covenants and agreements contained in this Agreement, to be kept and performed by the Developer, hereby grants to the Developer (and its employees, contractors, agents, permittees and licensees), the right, permit, license and easement to use and occupy that portion of the City Parcel as depicted in **Exhibit B** for the purpose of constructing and installing a sewer main. The Developer will have ingress and egress rights across adjacent portions of the City Parcel to access the installation area
2. Termination. This Agreement, and all rights granted hereunder, shall terminate automatically upon the City’s acceptance of the work as contemplated in Section 6.
3. Safety Measures. The Parties acknowledge that even if the City Parcel is closed for the duration of this Agreement, members of the public could foreseeably still enter the City Parcel. The Developer will therefore take all reasonable measures to minimize risk to the public, and will, at a minimum, cover any trenches with steel plates and place fencing around any potential public hazards while not performing work. The Developer will furthermore undertake any additional safety measures that the City, in its discretion, deems appropriate.
4. Restoration of Property. The Developer shall restore the installation area, as well as any other portion of the City Parcel affected by the work contemplated herein, as near as reasonably possible to its condition prior to commencement of such work.

5. Permits. The Developer will obtain all necessary permits and will comply with all applicable local, state, and federal laws and regulations with regards to the work contemplated herein.

6. Acceptance; Correction. The City will inspect the Developer’s work upon notice from the Developer that such work is completed. Upon determination and written notice by the City that the work contemplated herein is complete, the sewer main will become the property of the City. In the event the City determines that the work contemplated herein is not complete, the City will provide notice to the Developer of the deficiencies with the work, and the Developer will correct any such deficiencies as soon as is reasonably practicable.

7. Indemnification.

- a. Indemnification and Hold Harmless. The Developer shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Developer in the construction of the sewer main and/or in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
- b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Developer and the City, its officers, officials, employees, and volunteers, the Developer’s liability, including the duty and cost to defend, hereunder shall be only to the extent of the Developer’s negligence.
- c. The provisions of this Section 7 shall survive the expiration or termination of this Agreement.
- d. The Developer hereby knowingly, intentionally, and voluntarily waives the immunity of the Industrial Insurance Act, Title 51 RCW, solely for the purposes of the indemnity contained in subpart “a” of this Section 7. This waiver has been mutually negotiated by the parties.

_____ (City Initials) A (Developer Initials)

8. Insurance.

- a. **Insurance Term.** The Developer shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the construction and installation of the sewer main and/or the performance of this Agreement.

- b. **No Limitation.** Developer's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Developer to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- c. **Minimum Scope of Insurance.** Developer shall obtain insurance of the types and coverage described below:
 - (1) Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
 - (2) Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Developer's Commercial General Liability insurance policy with respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
 - (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- d. **Minimum Amounts of Insurance.** Developer shall maintain the following insurance limits:
 - (1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 - (2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- e. **Other Insurance Provision.** The Developer's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Developer's insurance and shall not contribute with it.
- f. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- g. **Verification of Coverage.** The Developer shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement,

evidencing the insurance requirements of the Developer before commencement of the Services.

- h. **Notice of Cancellation.** The Developer shall provide the City with written notice of any policy cancellation within two business days of the Developer's receipt of such notice.
- i. **Failure to Maintain Insurance.** Failure on the part of the Developer to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Developer to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Developer from the City.
- j. **Insurance to be Occurrence Basis.** Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy. Professional liability insurance may be written on a "Claims-made" basis if it is maintained for a period of three (3) years following completion of the services.
- k. **City Full Availability of Developer Limits.** If the Developer maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Developer, irrespective of whether such limits maintained by the Developer are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Developer.

9. Notices. Receipt of any notice shall be deemed effective three (3) calendar days after deposit of written notice in the U.S. mail with proper postage and address. The proper addresses for each party are:

- a. Developer: Keystone Land LLC
Attn: Paul Leavitt
13805 Smokey Point Blvd, STE 102
Marysville, WA 98271
- b. City: Director of Public Works
Public Works Department

City of Marysville
80 Columbia Avenue
Marysville, WA 98270

10. Disputes. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.
11. Extent of Agreement/Modification. This Agreement, together with exhibits, attachments, and addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by a written supplemental amendment properly signed by both parties.
12. Severability.
 - a. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining parts, terms, or provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
 - b. If any part, term, or provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that part, term, or provision shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.
13. Nonwaiver. A waiver by either party of a breach by the other party of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.
14. Fair Meaning. The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.
15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
16. Venue. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

17. No Third Party Beneficiaries. This Agreement is not intended to and shall not be construed to give any third party any interest or rights with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

19. Authority. The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the latest date written below.

DATED this _____ day of _____, 20_____.

CITY OF MARYSVILLE
By _____
Jon Nehring, Mayor

DATED this 13th day of OCTOBER, 2021.

By [Signature]
PAUL LEAVITT (Name)
Its: VP (Title)
KEYSTONE LAND, LLC

ATTEST/AUTHENTICATED:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

EXHIBIT A

Property Depictions with Planned Sewer Extension

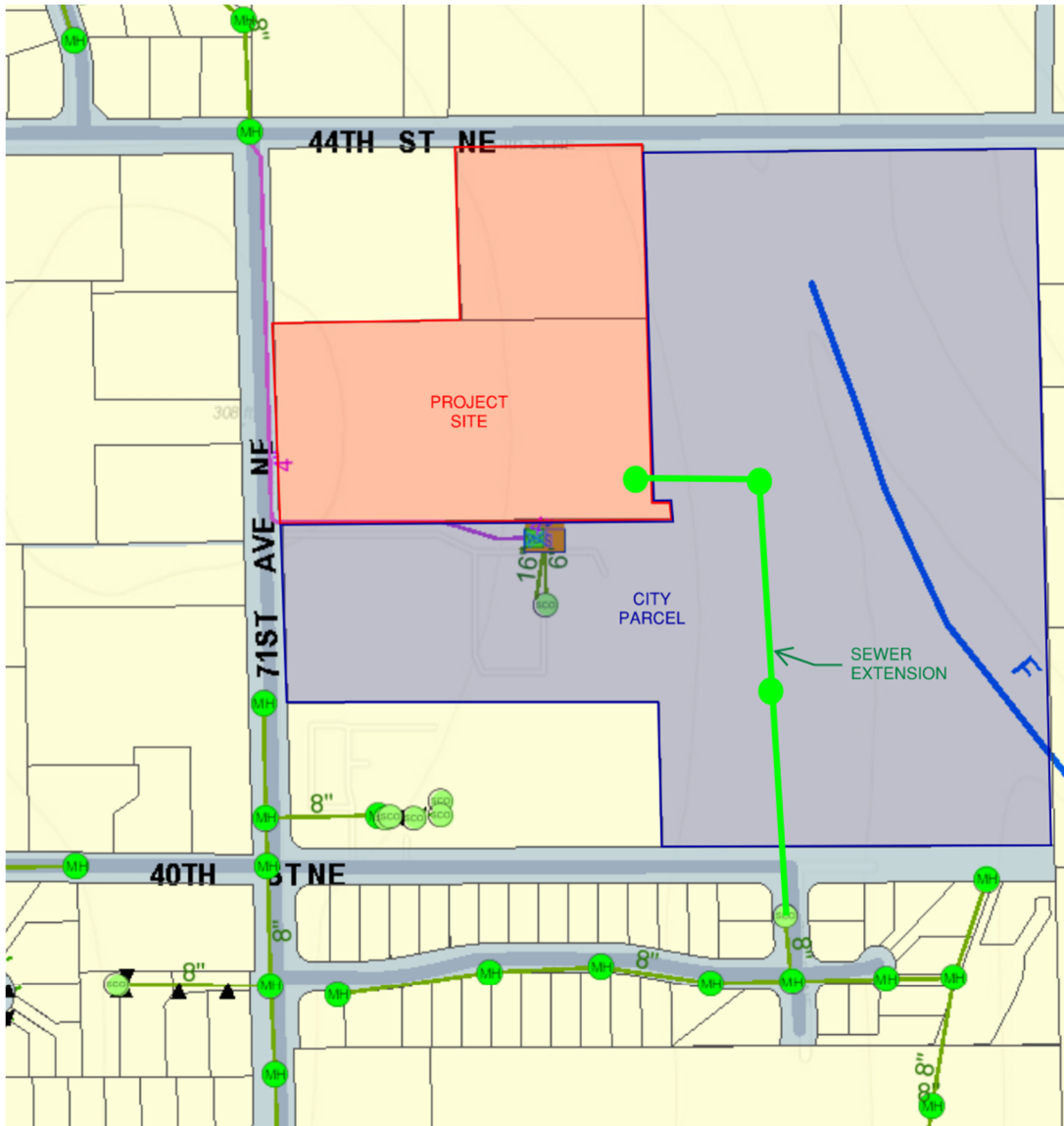
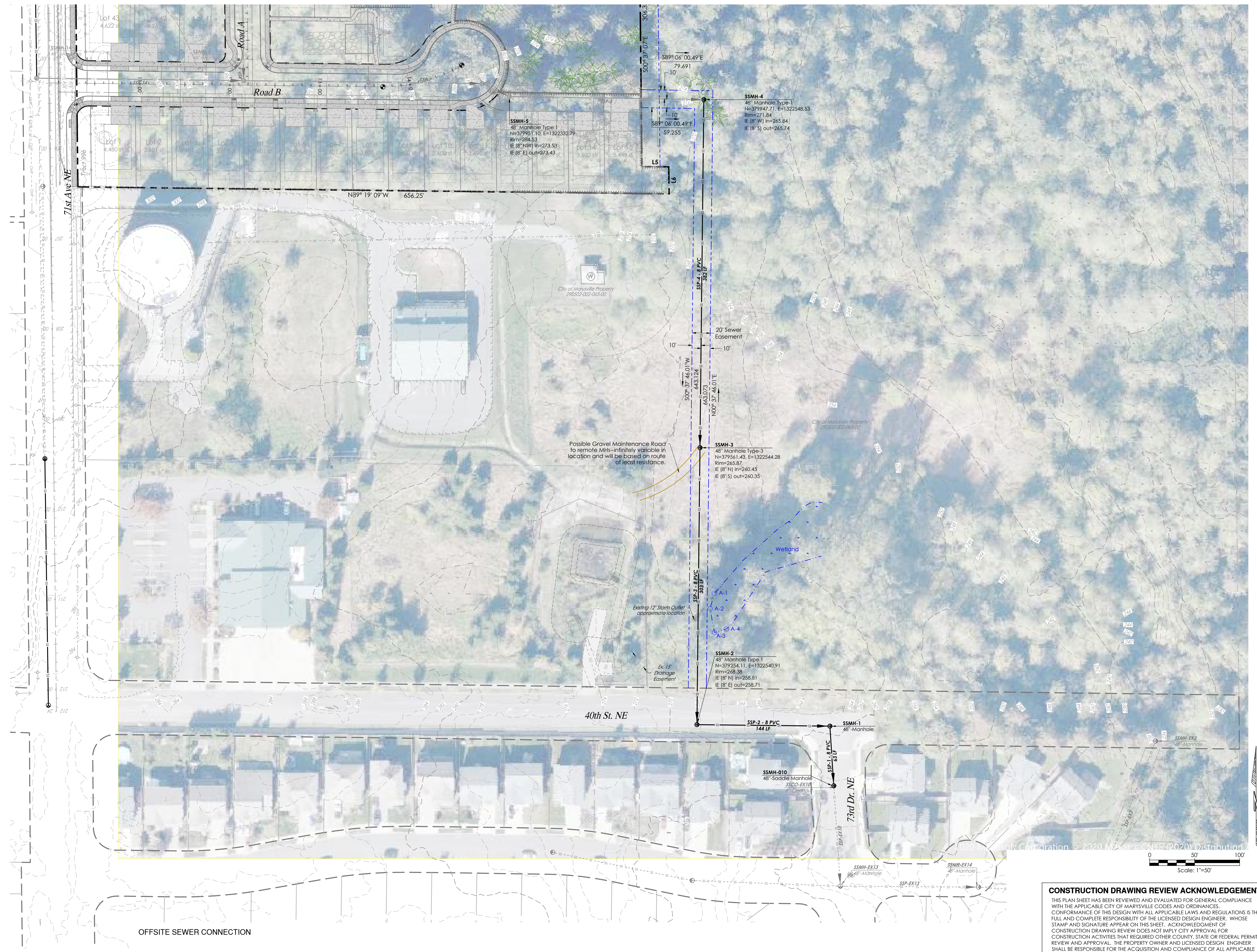


EXHIBIT B

A PORTION OF SECTION 2, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M.

LEGEND

- PROJECT BOUNDARY
- EXIST R/W LINE
- EXIST. PARCEL LINE
- BUILDING SETBACK
- PROPOSED CONTOUR MAJOR
- PROPOSED CONTOUR MINOR
- CONTOUR MAJOR, EXIST
- CONTOUR MINOR, EXIST
- EDGE OF PAVEMENT, EXIST
- CLEARING LIMIT
- EXIST POWERLINE
- EXISTING BUILDING
- PROPOSED PAVED AREA
- POWER POLE, EXIST
- REDI-ROCK WALL
- FENCE, EXIST
- "NO PARKING" FIRE LANE



CONSTRUCTION DRAWING REVIEW ACKNOWLEDGEMENT

THIS PLAN SHEET HAS BEEN REVIEWED AND EVALUATED FOR GENERAL COMPLIANCE WITH THE APPLICABLE CITY OF MARYSVILLE CODES AND ORDINANCES. CONFORMANCE OF THIS DESIGN WITH ALL APPLICABLE LAWS AND REGULATIONS IS THE FULL AND COMPLETE RESPONSIBILITY OF THE LICENSED DESIGN ENGINEER, WHOSE STAMP AND SIGNATURE APPEAR ON THIS SHEET. ACKNOWLEDGMENT OF CONSTRUCTION DRAWING REVIEW DOES NOT IMPLY CITY APPROVAL FOR CONSTRUCTION ACTIVITIES THAT REQUIRED OTHER COUNTY, STATE OR FEDERAL PERMIT REVIEW AND APPROVAL. THE PROPERTY OWNER AND LICENSED DESIGN ENGINEER SHALL BE RESPONSIBLE FOR THE ACQUISITION AND COMPLIANCE OF ALL APPLICABLE PERMITS OR AUTHORIZATIONS WHICH MAY INCLUDE BUT ARE NOT LIMITED TO: WSDOT HYDRAULIC PROJECT APPROVAL (HPA), WSDOE NOTICE OF INTENT (NOI), ANY CORPS OF ENGINEERS FILL PERMITS AND THE REQUIREMENTS OF THE ENDANGERED SPECIES ACT. THIS DAY OF 2021.

KEN MCINTYRE, P.E., DEVELOPMENT SERVICES MANAGER

THESE APPROVED CONSTRUCTION PLANS EXPIRE AFTER PERIOD OF 60 MONTHS FROM THE DATE SHOWN ABOVE OR UPON EXPIRATION OF PRELIMINARY PLAT OR SITE PLAN APPROVAL PER MMC 22A.040.020 & 22A.040.030.

CALL AT LEAST 2 BUSINESS DAYS BEFORE YOU DIG 1-800-424-5555

GENERAL NOTE:
It is the responsibility of the contractor and construction manager to ensure that all conflicts between plan sets are identified and resolved prior to commencement of construction activities. The contractor shall verify the location of all existing utilities prior to any construction. Agencies shall be notified within a reasonable time prior to the start of construction.

KEYSTONE LAND, LLC.
13805 Smokey Point Blvd, Ste 102, Marysville, WA 98271

MAPLEWOOD CROSSING
3000 71st Ave NE, Marysville, WA 98270

A PORTION OF SECTION 2, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M.

OFFSITE SEWER CONNECTION

LAND TECHNOLOGIES
18820 Third Avenue, N.E.
Arlington, WA 98223
360-652-9727

PROJECT LEAD: Merie
CHECKED BY: Tyler
DRAWN BY: Tyler, Alex
DATE: June 21, 2021
REVISION 1: September 6, 2021
REVISION 2:
REVISION 3:
REVISION 4:
AS-BUILT:


STATE OF WASHINGTON
REGISTERED PROFESSIONAL ENGINEER

SHEET C30 of C37
24x36
PA 20-064

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: November 8, 2021

AGENDA ITEM:	
Professional Services Agreement with PH Consulting, LLC for Engineering Design Services Associated with the Quiet Zone Project	
PREPARED BY:	DIRECTOR APPROVAL:
Jeff Laycock, Director of Engineering and Transportation Services	
DEPARTMENT:	
Public Works	
ATTACHMENTS:	
Professional Services Agreement	
BUDGET CODE:	AMOUNT:
30500030.563000, R2101	\$235,501.35
SUMMARY:	

The City desires to establish a quiet zone at railroad crossings within the City. If the train horns were silenced, this would promote a better environment and significantly reduce the noise interruptions through the day and night. To date, City staff have completed an early evaluation to implement a quiet zone and conducted a diagnostic team meeting with key stakeholders including BNSF, FRA and WUTC. These stakeholders provided guidance and input on the next steps required to establish a quiet zone.

The next level of effort, as demonstrated in the attached scope of work, will include further refinement of conceptual design alternatives at each crossing, cost estimates and recommended next steps such as risk analysis, project phasing and estimated schedules. At this time, the City's priority is to establish a quiet zone within the Downtown, which would require the quiet zone to span from 1st Street to 88th St NE. Additional effort is required to advance design to at least 30% for 6 crossings (1st, 4th, 8th, Grove, 80th and 88th), at which point, plans would be submitted to BNSF for review and comment.

In order to advance this level of effort, City staff advertised a Request for Proposals in May 2021. The City received one proposal from PH Consulting, LLC. The consultant's resume includes prior work with local agencies on quiet zone and railroad crossing projects such as establishing quiet zones within the City of Bellingham and Tacoma, a feasibility study for the City of Monroe, and a grade crossing improvement with wayside horn for the City of Mount Vernon. The attached Professional Services Agreement (PSA) will provide the City with the services needed to advance the quiet zone project.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign and execute the Professional Services Agreement with PH Consulting, LLC for Engineering Design Services Associated with the Quiet Zone Project in the amount of \$235,501.35.

RECOMMENDED MOTION:

I move to authorize the Mayor to sign and execute the agreement.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF MARYSVILLE
AND PH CONSULTING, LLC**

THIS AGREEMENT (“Agreement”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (“City”), and PH Consulting, LLC, a limited liability corporation and licensed in Washington, organized under the laws of the state of Washington, located and doing business at 913 Martin Luther King Jr Way, Suite A, Tacoma, WA 98405 (“Consultant”).

In consideration of the terms, conditions, covenants, and performances contained herein, the parties hereto agree as follows:

- 1. SCOPE OF SERVICES.** The Consultant shall provide the work and services described in the attached **EXHIBIT A**, incorporated herein by this reference (the “Services”). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant’s profession.
- 2. TERM.** The term of this Agreement shall commence upon notice to proceed as issued by the City and shall terminate at midnight on December 31, 2022. The parties may extend the term of this Agreement by executing a written supplemental amendment.
- 3. COMPENSATION.** The Consultant shall be paid by the City for Services rendered under this Agreement as described in **EXHIBIT A** and as provided in this section. In no event shall the compensation paid to Consultant under this Agreement exceed **Two Hundred Thirty Five Thousand Five Hundred One Dollars and Thirty Five Cents (\$235,501.35)** within the term of the Agreement, including extensions, without the written agreement of the Consultant and the City. Such payment shall be full compensation for the Services and for all labor, materials, supplies, equipment, incidentals, and any other expenses necessary for completion.

The Consultant shall submit a monthly invoice to the City for Services performed in the previous calendar month in a format acceptable to the City. The Consultant shall maintain time and expense records and provide them to the City upon request.

The City will pay timely submitted and approved invoices received before the 20th of each month within thirty (30) days of receipt.

4. CONSULTANT’S OBLIGATIONS.

4.1 MINOR CHANGES IN SCOPE. The Consultant agrees to accept minor changes, amendments, or revisions to the scope of the Services, as may be required by the City, when such

changes, amendments, or revisions will not have any impact on the cost of the Services or the proposed delivery schedule.

4.2 ADDITIONAL WORK. The City may desire to have the Consultant perform additional work or services which are not identified in the scope of the Services. If the parties agree to the performance of additional work or services, the parties will execute a written supplemental amendment detailing the additional work or services and compensation therefore. In no event will the Consultant be compensated for preparing proposals for additional work or services. In no event shall the Consultant begin work contemplated under a supplemental amendment until the supplemental amendment is fully executed by the parties.

4.3 WORK PRODUCT AND DOCUMENTS. The work product and all documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the Services shall become the property of the City, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the Services, the work product, and all documents produced under this Agreement, even though the Services have been accepted by the City.

In the event that the Consultant defaults on this Agreement or in the event that this Agreement is terminated prior to the completion of the Services or the time for completion, all work product and all documents and other materials produced under this Agreement, along with a summary of work as of the date of default or termination, shall become the property of the City. The summary of Services provided shall be prepared at no additional cost to the City. Upon request, the Consultant shall tender the work product, all documents, and the summary to the City within five (5) business days. Tender of said work product shall be a prerequisite to final payment under this Agreement.

The Consultant will not be held liable for reuse of work product or documents produced under this Agreement or modification of the work product or documents for any purpose other than those identified in this Agreement without the written authorization of the Consultant.

4.4 PUBLIC RECORDS ACT. Consultant acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the “PRA”). All records owned, used, or retained by the City are public records subject to disclosure unless exempt under the PRA, whether or not the records are in the possession or control of the City or Consultant. All exemptions to the PRA are narrowly construed.

a. **Confidential Information.** Any records provided to the City by the Consultant which contain information that the Consultant in good faith believes is not subject to disclosure under the PRA shall be marked “Confidential” and shall identify the specific information that the Consultant in good faith believes is not subject to disclosure under the PRA and a citation to the statutory basis for non-disclosure.

b. **Responding to Public Records Requests.** The City shall exercise its sole legal judgment in responding to public records requests.

- (1) The City may rely upon the lack of notification from the Consultant in releasing any records that are not marked “Confidential.”
- (2) If records identified as “Confidential” by the Consultant are responsive to a PRA request, the City will seek to provide notice to Consultant at least ten (10) business days before the date on which the City anticipates releasing records. The City is under no obligation to assert any applicable exemption on behalf of the Consultant. The Consultant may seek, at its sole cost, an injunction preventing the release of information which it believes is protected. In no event will the City have any liability to Consultant for any failure of the City to provide notice prior to release.
- (3) If the City, in its sole legal judgment, believes that the Consultant possesses records that (1) are responsive to a PRA request and (2) were used by the City, the City will request the records from the Consultant. The Consultant will, within ten (10) business days:
 - i. Provide the records to the City in the manner requested by the City;
 - ii. Obtain a court injunction, in a lawsuit involving the requester, covering all, or any confidential portion of, the records and provide any records not subject to the court injunction; or
 - iii. Provide an affidavit, in a form acceptable to the City Attorney, specifying that the Consultant has made a diligent search and did not locate any requested documents.

c. **Indemnification.** In addition to its other indemnification and defense obligations under this Agreement, the Consultant shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorneys fees and litigation expenses), suits, judgments, or damages (collectively “Damages”) arising from or relating to any request for records related to this Agreement, to the extent such Damages are caused by action or inaction of the Consultant. This indemnification and defense obligation shall survive the expiration or termination of this Agreement.

4.5 MAINTENANCE/INSPECTION OF RECORDS. The Consultant shall maintain all books, records, documents, and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit.

Representatives of the City and/or the Washington State Auditor may copy such books, accounts, and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

4.6 INDEMNITY.

a. Indemnification and Hold Harmless. The Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant’s liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant’s negligence.

c. The provisions of this Section 4.6 shall survive the expiration or termination of this Agreement.

d. The Consultant hereby knowingly, intentionally, and voluntarily waives the immunity of the Industrial Insurance Act, Title 51 RCW, solely for the purposes of the indemnity contained in subpart “a” of this Section 4.6. This waiver has been mutually negotiated by the parties.

_____ (City Initials) _____ (Contractor Initials)

4.7 INSURANCE.

a. **Insurance Term.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Services hereunder by the Consultant, its agents, representatives, or employees.

b. **No Limitation.** Consultant’s maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City’s recourse to any remedy available at law or in equity.

c. **Minimum Scope of Insurance.** Consultant shall obtain insurance of the types and coverage described below:

- (1) Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
- (2) Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4) Professional Liability insurance appropriate to the Consultant's profession.

d. **Minimum Amounts of Insurance.** Consultant shall maintain the following insurance limits:

- (1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- (2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- (3) Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

e. **Other Insurance Provision.** The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

f. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

g. **Verification of Coverage.** The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the Services.

h. **Notice of Cancellation.** The Consultant shall provide the City with written notice of any policy cancellation within two business days of the Consultant's receipt of such notice.

i. **Failure to Maintain Insurance.** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Consultant to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

j. **Insurance to be Occurrence Basis.** Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy. Professional liability insurance may be written on a "Claims-made" basis if it is maintained for a period of three (3) years following completion of the services.

k. **City Full Availability of Consultant Limits.** If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

4.8 LEGAL RELATIONS. The Consultant shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the Services to be performed under this Agreement. The Consultant represents that it and all employees assigned to perform any of the Services under this Agreement are in full compliance with the statutes of the State of Washington governing the Services and that all personnel to be assigned to the Services are fully qualified and properly licensed to perform the work to which they will be assigned.

4.9 INDEPENDENT CONTRACTOR.

a. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants, and agrees that the Consultant's status as an independent contractor in the performance of the Services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the Services required under this Agreement. The Consultant shall not make

a claim of City employment and shall not claim any related employment benefits, social security, and/or retirement benefits.

b. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work to the Services that the Consultant performs under this Agreement.

d. Prior to commencement of Services, the Consultant shall obtain a business license from the City.

4.10 EMPLOYMENT.

a. The term “employee” or “employees” as used herein shall mean any officers, agents, or employee of the Consultant.

b. Any and all employees of the Consultant, while performing any Services under this Agreement, shall be considered employees of the Consultant only and not of the City. The Consultant shall be solely liable for: (1) and any and all claims that may or might arise under the Workman’s Compensation Act, Title 51 RCW, on behalf of any said employees while performing any Services under this Agreement, and (2) any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while performing any Services under this Agreement.

c. The Consultant represents, unless otherwise indicated below, that all employees of the Consultant that will perform any Services under this Agreement have never been retired from a Washington State retirement system, including but not limited to Teacher (TRS), School District (SERS), Public Employee (PERS), Public Safety (PSERS), law enforcement and fire fighters (LEOFF), Washington State Patrol (WSPRS), Judicial Retirement System (JRS), or otherwise. *(Please use initials to indicate No or Yes below.)*

_____ No, employees performing the Services have never been retired from a Washington state retirement system.

_____ Yes, employees performing the Services have been retired from a Washington state retirement system.

In the event the Consultant checks “no”, but an employee in fact was a retiree of a Washington State retirement system, and because of the misrepresentation the City is required to defend a claim by the Washington State retirement system, or to make contributions for or on account of the employee, or reimbursement to the Washington State retirement system for benefits paid, the Consultant hereby agrees to save, indemnify, defend and hold the City harmless from and against all expenses and costs, including reasonable attorney fees incurred in defending the claim of the Washington State retirement system and from all contributions paid or required to be paid, and for all reimbursement required to the Washington State retirement system. In the event the Consultant checks “yes” and affirms that an employee providing work has ever retired from a Washington State retirement system, every said employee shall be identified by the Consultant and such retirees shall provide the City with all information required by the City to report the employment with Consultant to the Department of Retirement Services of the State of Washington.

4.11 NONASSIGNABLE. Except as provided in **EXHIBIT B**, the Services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

4.12 SUBCONTRACTORS AND SUBCONSULTANTS.

a. The Consultant is responsible for all work or services performed by subcontractors or subconsultants pursuant to the terms of this Agreement.

b. The Consultant must verify that any subcontractors or subconsultants the Consultant directly hires meet the responsibility criteria for the Services. Verification that a subcontractor or subconsultant has proper license and bonding, if required by statute, must be included in the verification process. If the parties anticipate the use of subcontractors or subconsultants, the subcontractors or subconsultants are set forth in **EXHIBIT B**.

c. The Consultant may not substitute or add subcontractors or subconsultants without the written approval of the City.

d. All subcontractors or subconsultants shall have the same insurance coverage and limits as set forth in this Agreement and the Consultant shall provide verification of said insurance coverage.

4.13 CONFLICTS OF INTEREST. The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant’s client base and shall obtain written permission from the City prior to providing services to third parties when a conflict or potential conflict of interest exists. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

4.14 CITY CONFIDENCES. The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate, or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or the Services provided to the City.

4.15 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION. The Consultant agrees to comply with equal opportunity employment and not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age, or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training; or rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth its nondiscrimination obligations. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

4.16 UNFAIR EMPLOYMENT PRACTICES. During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

5. CITY APPROVAL REQUIRED. Notwithstanding the Consultant's status as an independent contractor, the Services performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if the Services have been completed in compliance with the Scope of Services and City requirements.

6. GENERAL TERMS.

6.1 NOTICES. Receipt of any notice shall be deemed effective three (3) calendar days after deposit of written notice in the U.S. mail with proper postage and address.

Notices to the City shall be sent to the following address:

CITY OF MARYSVILLE

Jeff Laycock

80 Columbia Ave

Marysville, WA 98270

Notices to the Consultant shall be sent to the following address:

PH CONSULTING, LLC

Pablo Para

913 MLK Way Jr Way, Suite A

Tacoma, WA 98405

6.2 TERMINATION. The City may terminate this Agreement in whole or in part at any time by sending written notice to the Consultant. As per Section 6.1, the Consultant is deemed to have received the termination notice three (3) calendar days after deposit of the termination notice in the U.S. mail with proper postage and address. The termination notice is deemed effective seven (7) calendar days after it is deemed received by the Consultant.

If this Agreement is terminated by the City for its convenience, the City shall pay the Consultant for satisfactory Services performed through the date on which the termination is deemed effective in accordance with payment provisions of Section 3, unless otherwise specified in the termination notice. If the termination notice provides that the Consultant will not be compensated for Services performed after the termination notice is received, the City will have the discretion to reject payment for any Services performed after the date the termination notice is deemed received.

6.3 DISPUTES. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

6.4 EXTENT OF AGREEMENT/MODIFICATION. This Agreement, together with exhibits, attachments, and addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by a written supplemental amendment properly signed by both parties.

6.5 SEVERABILITY.

a. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining parts, terms, or provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

b. If any part, term, or provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that part, term, or provision shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

6.6 NONWAIVER. A waiver by either party of a breach by the other party of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

6.7 FAIR MEANING. The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

6.8 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

6.9 VENUE. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

6.10 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

6.11 AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT. The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth herein.

DATED this _____ day of _____, 20_____.

CITY OF MARYSVILLE

By _____
Jon Nehring, Mayor

DATED this _____ day of _____, 20_____.

PH CONSULTING, LLC

By _____
Pablo Para
Its: Principal

ATTEST/AUTHENTICATED:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

EXHIBIT A
Scope of Services

Project Name: Marysville Quiet Zone Project
Job #: 21-008
Date: October 5, 2021

Project Description

PH Consulting (“PH”) will provide management, analysis, and engineering services for the City of Marysville’s Quiet Zone Improvement Project (“Project”) covering 24 existing public and private grade crossings. The project generally consists of developing conceptual layouts for 16 grade crossings and preliminary 30% design documents for the designated “First Phase” locations consisting of eight grade crossings along the BNSF Railway corridor and a new HAWK Beacon Crossing. PH’s core teaming partners on this project include The Blueline Group, LLC (“Blueline”), Axis Survey (“Axis”), and Alfred Benesch & Co (“Benesch”). These firms are collectively referred to as our “Team” throughout this proposal. Our Team will also coordinate with City, Project stakeholders, regulatory agencies, permitting agencies, and provide community engagement as necessary. Future services include final design, processing Quiet Zone applications and approvals, assisting in BNSF Railway negotiations, UTC Petition processing, Right-of-Way acquisition services, environmental permitting services, bidding services and construction management. Additional sub-consultants may be added to Team as needed to support future phases and specialties.

Task Summary

Task 001	Project Management	Task 007	60%, 90%, Final Design (Future)
Task 002	Survey Services	Task 008	Agency Permitting (Future)
Task 003	Review QZ Documents	Task 009	Bidding & Award Services (Future)
Task 004	Alternatives Evaluation	Task 010	Construction Management (Future)
Task 005	Council Review Support	Task 011	Management Reserve
Task 006	30% Preliminary Design		Expenses

Project Schedule

Our Team shall begin work immediately upon receipt of Notice to Proceed and proceed according to the attached Project Schedule. This schedule reflects the City’s desire to complete construction in 2024. Key dates include:

Notice to Proceed	November 2021
Topo Survey	December 2021
Review Existing QZ Documents	December 2021
Alternatives Evaluation	February 2022
Council Review.....	April 2022
30% Design Submittal	June 2022
Stakeholder Review	June 2022
Regulatory/Stakeholder Review	August 2022
Contract End Date	December 31, 2022
<u>Future Phases Requiring Supplement</u>	
Final Design Submittal	December 2023
Bidding & Award	February 2024
Construction Begins	Spring 2024



Scope of Work

PH's scope of work for the project is outlined on the following pages.

Task 001 Project Management

Fee: Hourly Rate/NTE

This task is for general coordination and meetings on the project, including plan review/discussion meetings, in-house quality assurance, coordination with subconsultants, etc. PH will prepare monthly invoices for work performed during the previous month. This will also include bi-weekly meetings between the Project Manager and the City with attendance by other team members as necessary. (Phone calls every two weeks with PM/City and monthly or bi-monthly between other team members depending on work being completed.)

ASSUMPTIONS & EXCLUSIONS

The scope and fee for this task includes the following assumptions and exclusions:

- City has existing design review agreement with BNSF Railway.
- Quiet Zones will be evaluated and implemented in a minimum of two segments. (Mainline and Spur)
- City has determined Wayside Horns are not preferred solution.

Task 002 Survey Services

Fee: Hourly Rate/NTE

Axis will provide Topographic survey for the First Phase project areas to include the rail crossings, adjacent properties, parallel and adjacent street surface improvements at the following seven locations:

1. 1st Street Crossing, at Cedar Ave (DOT 084630B)
2. 4th Street (SR 528) Crossing, east of Cedar Ave (DOT 084640G)
3. 4th Street (SR 528) and Delta Ave Intersection
4. 8th Street Crossing, Between Cedar Ave and Delta Ave (DOT 084644J)
5. Grove Street Crossing, Between Cedar Ave and State Ave (DOT 084646X)
6. 80th Street NE Crossing, at State St (DOT 084647E)
7. 88th Street NE Crossing (DOT 084650M)

AutoCad drawings will be prepared at a scale of 1"=20'. Services will include the following:

- Control survey in NAD 83/11 Horizontal Datum, with all elevations derived from and checked to NAVD 88 Vertical Datum.
- Delineated parcel lines within above-described area as available from title reports, recorded plats and public records further compared to City of Marysville and Snohomish County Parcel GIS lines.
- Set additional elevation benchmarks at each end of each crossing.
- Contract with and coordinate services of private utility locate company to ascertain conductible underground non-City owned utility locations and available as-built records.



- Depict hard and soft surfaces on individual layers per accepted APWA standards.
- Show and dimension located topographic features and contours at 2' intervals.
- Show known utilities as provided by City of Marysville GIS, research of available utility as-built records and as located by utility locators.

ASSUMPTIONS & EXCLUSIONS

The scope and fee for this task includes the following assumptions and exclusions:

- The City will provide necessary right of entry into private property and notice to landowners along the route of mapping activity. The City will provide a copy of the notice to be presented to landowners by Axis.
- Team will coordinate right of entry to BNSF Right of Way and will coordinate for BNSF Flaggers as needed to be present during surveying.
- The City will procure all necessary property title reports and provide to Team.
- Team will coordinate procurement of BNSF Railway right of way maps.
- City will pay all applicable fees/costs.

DELIVERABLES

- AutoCad drawing file with point database and dtm files.

Task 003 Review Quiet Zone Documents

Fee: Hourly Rate/NTE

Task includes collection and review of existing project report, exhibits, documentation, diagnostic meeting notes. Review will include field investigation of existing conditions at each crossing. After review, Team will prepare technical memorandum documenting findings and options/recommendations. If additional alternatives are identified they will be evaluated as part of Task 004, as directed by City.

DELIVERABLES

- Project Review Technical Memorandum

Task 004 Alternatives Evaluation

Fee: Hourly Rate/NTE

Team will review citywide crossings and develop alternative scenarios for implementing two or more quiet zone segments. This task includes developing sketches of proposed improvements, summarizing corresponding QZRI scoring, documenting risks for various options, planning level costs for each scenario, and recommended safety improvements (if any). Alternatives will consider existing configuration as well as full-buildout configuration for the nine First Phase project locations. Potential new public crossing at 84th St NE will not be evaluated in the



design alternatives. Team will coordinate with FRA to determine appropriate approach for future 84th St NE crossing and for review of any proposed ASM's to gain concurrence on scoring assumptions.

DELIVERABLES

- Alternatives Summary Memorandum Including
 - Crossing Alternative Conceptual Layouts
 - Up to 18 First Phase Layouts (two per each First Phase crossing)
 - Up to 16 Layouts (one per each non-First Phase Crossing)
 - QZRI Calculations
 - Planning Level Construction & Maintenance Cost Estimates
 - Recommended Alternative
 - Recommended Next Steps

Task 005 Council Review Support

Fee: Hourly Rate/NTE

Our Team anticipates that general public outreach will not be needed for this project. This task is for providing staff support in preparing exhibits, agenda, memorandum, and other council/committee presentation materials. Services will include:

- Coordination of information efforts with City staff.
- Participation at up to two (2) City of Marysville Council/Committee meetings, times to be determined.

DELIVERABLES

- Presentation material, email responses, and other correspondence as needed.

Task 006 30% Preliminary Design

Fee: Hourly Rate/NTE

Our Team will develop conceptual layouts for 16 public and private crossings and detailed preliminary design plans and estimates for six public and two private grade crossings as part of the assumed First Phase of the Quiet Zone between 1st St and 88th St. Additionally, we will prepare detailed preliminary design and estimate for a new HAWK Beacon Pedestrian Crossing. First Phase project locations plans and estimated will include anticipated ROW acquisition/easement areas. Team will coordinate with First Phase property owners to understand business operations, access needs, solicit input for crossing design alternatives, and incorporate feedback into crossing layout design. Layouts will include all required elements necessary to facilitate City, FRA, BNSF, and WSDOT review. Team will prepare base maps from aerial tiles and Snohomish County/City of Marysville GIS data for the project areas specified below in addition to the base maps prepared under Task 002. The project areas generally include the rail crossings, adjacent properties, and adjacent street surface improvements at the following locations:



BNSF Mainline Crossings

8. Private Crossing, south of 84th St NE (DOT 084648L)
9. Private Crossing, north of 84th St NE (DOT 084649T)
10. Private Crossing, adjacent to 92nd St NE (DOT 084651U)
11. Private Crossing, approximately 97th St NE (DOT 084652B)
12. 104th Street NE, at State Ave (DOT 084653H)
13. 116th Street NE, at State Ave (DOT 084654P)
14. 122nd Street NE, at State Ave (DOT 084657K)
15. Private Crossing, 124th Street, at State Ave (DOT 084658S)
16. 128th Street NE, at State Ave (DOT 084660T)
17. Private Crossing, south of 132nd St NE (DOT 084661A)
18. 136th Street NE, at State Ave (DOT 084664V)
19. Private Crossing, south of 172nd St NE (DOT 084668X)
20. 172nd Street NE (SR 531), west of 19th Ave NE (DOT 084669E)

BNSF Spur Line Crossings

21. State Avenue 092077P
22. 128th Street NE 092080X
23. 136th Street NE 092081E
24. 51st Avenue NE 092082L
25. 152nd Street NE 092083T

Services under this task will include:

- Coordinating with Directly Affected Property Owners.
- Coordinating with WSDOT Rail and Traffic groups.
- Coordinating Grade Crossing Status with UTC.
- Coordinating design review with BNSF Railway.
- Developing Conceptual layouts showing recommended crossing improvements for 16 public and private grade crossings.
- Developing Detailed 30% Level Preliminary Design Plans for six public grade crossings and two private grade crossings.
- Developing Detailed 30% Level Preliminary Design Plans for HAWK Beacon at 4th St (SR-528) & Delta Ave.
- Developing Preliminary Cost Estimates for each crossing/intersection improvement.
- Evaluating Right-of-Way impacts and costs.

ASSUMPTIONS & EXCLUSIONS

- The scope and fee for this task includes the following assumptions and exclusions:
- Preliminary Design will not include specifications/special provisions, wiring diagrams, electrical details, pole schedules, grading details, profiles, or other final design elements.
- Diagnostic Team Meeting will not be required.
- New Pre-Emption Timing Calculations are not included.



- Grove Street will remain an at-grade crossing and does not consider the City’s plan for an overcrossing at this location.
- BNSF requires 30% plans before providing comment on plans and providing preliminary estimates for BNSF crossing improvements.

DELIVERABLES

- Private Property Owner Communications
- Conceptual Crossing Improvement Layouts (PDF) (16)
- 30% Crossing Improvement Plans (Eight)
- 30% HAWK Beacon Improvements Plans
- 30% Cost Estimates
 - Eight (8) 30% Design Estimates for First Phase Grade Crossings
 - One (1) 30% Design Estimate for HAWK Beacon
 - 16 Conceptual Level Estimates for non-First Phase Grade Crossings

Task 007 60%, 90%, Final Design (Future)

Fee: Hourly Rate/NTE (Estimate TBD)

Detailed final design development scope will be provided as part of future supplement after City and stakeholder review of preliminary plans. Scope may include improvements for one or more crossings as determined by City.

DELIVERABLES

- TBD

Task 008 Agency Permitting (Future)

Fee: Hourly Rate/NTE

This task will include preparation and submittal of applications for known necessary permits and approvals pertaining to this project. We will also provide the appropriate coordination during these processes until the approvals are obtained. It is assumed for budget purposes that the following permits/approvals will be needed for the project:

- WSDOT Channelization Plans
- WSDOT Signal Permit (HAWK Beacon)
- FRA Public Authority Applications
- Quiet Zone Notice of Intent Filing
- UTC Grade Crossing Petitions
- BNSF Railway Construction & Maintenance Agreements



- Snohomish PUD Electrical Service Application

ASSUMPTIONS & EXCLUSIONS

The scope and fee for this task includes the following assumptions and exclusions:

- Any fees associated with the permits are not included and are to be paid by the City.

DELIVERABLES

- TBD

Task 009 Bidding & Award Services (Future)

Fee: Hourly Rate/NTE

Team will provide consultation services during the bidding and award process, including:

- Attend Pre-Bid Conference and address questions from prospective bidders, if necessary.
- Prepare and issue addenda to clarify the construction documents, if necessary.
- Generally assist the City during the bidding process as needed.

ASSUMPTIONS & EXCLUSIONS

The scope and fee for this task includes the following assumptions and exclusions:

- TBD

DELIVERABLES

- TBD

Task 010 Construction Management Services (Future)

Fee: Hourly Rate/NTE

Team will provide construction management services, including:

- TBD

ASSUMPTIONS & EXCLUSIONS

The scope and fee for this task includes the following assumptions and exclusions:

- TBD

DELIVERABLES

- TBD



Task 011 Management Reserve

Fee: Hourly Rate/NTE

This task provides for unanticipated services deemed to be necessary during the course of the Project that are not specifically identified in the scope of work tasks defined above, including additional Community Outreach or Field Survey needed. Funds in this task are not to be used unless explicitly authorized by the City. Fee estimate is based on $\pm 5\%$ of authorized Tasks.

Expenses

Fee: Allowance

This task provides for reimbursement associated with mileage, meetings, plots, and site visits throughout the course of the project.



General Assumptions and Notes

- Scope and fees outlined above are based on the Project Understanding included with this proposal as well as the following information (any changes to these documents may result in changes to the fees):
 - a. Scoping meeting with the City, PH, and Blueline on July 8, 2021.
- PH will not pay any Agency fees on behalf of the City.
- Obtaining any offsite easements (if required) is not included in this proposal.
- The fees stated above do not include reimbursable expenses such as large format copies (larger than legal size), mileage, and plots. These will be billed under a separate task called **EXPENSES**.
- Time and expense items are based on our Team's current hourly rates.
- Electrical plans, structural engineering plans, geotechnical services, new signal timings, WSDOT Channelization plan approval/checklist, and temporary signal design are not included in this scope of work.
- City to prepare SEPA internally if necessary.
- The City will provide all available project traffic data, signal as-built information, traffic signal timing/phasing plans, and Crash records.
- PH reserves the right to move funds between approved Tasks as necessary based on approved scope of work provided the overall budget of Tasks is not exceeded. The City's Project Manager will be notified if funds are shifted.
- If Client requests Team's assistance in complying with any public records request, including without limitation providing copies of documents and communications, Client will pay Team's hourly fees and costs incurred in providing such assistance at then-current rates. Such fees and costs will be billed as a separate task.



PH Consulting Staff Category	Hours	Rate	Cost
Principal	36	\$ 210.00	\$ 7,560.00
Senior Project Manager	168	\$ 195.00	\$ 32,760.00
Senior Traffic Engineer	136	\$ 180.00	\$ 24,480.00
Project Engineer	96	\$ 160.00	\$ 15,360.00
CAD Designer II	272	\$ 125.00	\$ 34,000.00
Associate Engineer	20	\$ 100.00	\$ 2,000.00
Office Administrator	12	\$ 100.00	\$ 1,200.00
Total Hours	740		\$ 117,360.00
Direct Salary Cost			\$ 117,360.00
Direct Expenses	Unit	Cost	Total
Traffic Counts		\$ -	\$ -
Reproduction Costs			
Full Sized Copies (Bond)	1	\$ -	\$ -
Reprographics	1	\$ 100.00	\$ 100.00
Travel (Airfare, Hotel)	1	\$ 1,000.00	\$ 1,000.00
Other Expenses (Blueline)	1	\$ 500.00	\$ 500.00
2021 Mileage Rates	1	\$0.56/Mi	\$ 200.00
Sub-Total Direct Expenses			\$ 1,800.00
Subconsultants			
Blueline		\$ 44,957.00	
AXIS Survey		\$ 43,670.00	
Benesch		\$ 16,500.00	
Sub-Total Subconsultants			\$ 105,127.00
Sub-Total Project Fee Estimate			\$ 224,287.00
Management Reserve (~5%)			\$ 11,214.35
Total Fee			\$ 235,501.35

Task No.	Task Description	Principal	Senior Project Manager	Senior Traffic Engineer	Project Engineer	CAD Designer II	Associate Engineer	Office Administrator	Sub-consultants	Total
	Hourly Rate	\$ 210.00	\$ 195.00	\$ 180.00	\$ 160.00	\$ 125.00	\$ 100.00	\$ 100.00		
1.0	PROJECT MANAGEMENT									
1.1	Project Coordination	2	12							14
1.2	Project Monitoring, Progress Reporting, & Invoicing		12					12		24
1.3	Project Team Meetings	4	12	8	4	8	4			40
1.4	Subconsultant Management		8							8
	Blueline								\$ 4,334.00	
	Task 1.0 Total Hours	6	44	8	4	8	4	12		86
	Subtotal Task 1.0	\$ 1,260.00	\$ 8,580.00	\$ 1,440.00	\$ 640.00	\$ 1,000.00	\$ 400.00	\$ 1,200.00	\$ 4,334.00	\$ 18,854.00
2.0	SURVEY SERVICES									
2.1	AXIS								\$ 43,670.00	
	Task 2.0 Total Hours	0	0	0	0	0	0	0		0
	Subtotal Task 2.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 43,670.00	\$ 43,670.00
3.0	REVIEW QUIET ZONE DOCUMENTS									
3.1	Data Collection and Site Review		4	12	8					24
3.2	Evaluate Existing QZ Documents		12							12
3.4	Technical Memorandum	2	8	8						18
	Benesch								\$ 5,500.00	
	Blueline								\$ 3,982.00	
	Task 3.0 Total Hours	2	24	20	8	0	0	0		54
	Subtotal Task 3.0	\$ 420.00	\$ 4,680.00	\$ 3,600.00	\$ 1,280.00	\$ -	\$ -	\$ -	\$ 9,482.00	\$ 19,462.00
4.0	ALTERNATIVES EVALUATION									
4.1	Develop & Analyze QZ Options/Alternatives	4	12	24		136				176
4.2	QZRI Calculations		4	8	24					36
4.3	Project Cost Estimates		4	8	24		8			44
4.4	Alternatives Technical Memorandum	4	12	8						24
	Benesch								\$ 5,500.00	
	Blueline								\$ 3,982.00	
	Task 4.0 Total Hours	8	32	48	48	136	8	0		280
	Subtotal Task 4.0	\$ 1,680.00	\$ 6,240.00	\$ 8,640.00	\$ 7,680.00	\$ 17,000.00	\$ 800.00	\$ -	\$ 9,482.00	\$ 51,522.00
5.0	COUNCIL REVIEW SUPPORT									
5.1	Council Material/Exhibit Preparation		4	4		8				16
5.2	Council Presentation Support	4	8							12
	Task 5.0 Total Hours	4	12	4	0	8	0	0		28
	Subtotal Task 5.0	\$ 840.00	\$ 2,340.00	\$ 720.00	\$ -	\$ 1,000.00	\$ -	\$ -	\$ -	\$ 4,900.00
6.0	30% PRELIMINARY DESIGN									
6.1	Agency/Property Owner Coordination	4	12							16
6.2	Conceptual Crossing Layouts (16)	2	4	8		16				30
6.3	Conceptual Crossing Estimates (16)	2	4	8		4				18
6.4	30% Crossing Layouts (8)	2	8	16		72				98
6.5	30% HAWK Beacon Design	2	4	8	12	16				42
6.6	30% Preliminary Estimates (9)	4	24	16	24	12	8			88
	Benesch								\$ 5,500.00	
	Blueline								\$ 32,659.00	
	Task 6.0 Total Hours	16	56	56	36	120	8	0		274
	Subtotal Task 6.0	\$ 3,360.00	\$ 10,920.00	\$ 10,080.00	\$ 5,760.00	\$ 15,000.00	\$ 800.00	\$ -	\$ 38,159.00	\$ 84,079.00
7.0	60%, 90%, FINAL DESIGN (FUTURE)									
7.1										0
	Task 7.0 Total Hours	0	0	0	0	0	0	0		0
	Subtotal Task 7.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
8.0	AGENCY PERMITTING (FUTURE)									
8.1										0
	Task 8.0 Total Hours	0	0	0	0	0	0	0		0
	Subtotal Task 8.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
9.0	BIDDING & AWARD SERVICES (FUTURE)									
9.1										0
	Task 9.0 Total Hours	0	0	0	0	0	0	0		0
	Subtotal Task 9.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
10.0	CONSTRUCTION MANAGEMENT SERVICES (FUTURE)									
10.1										0
	Task 10.0 Total Hours	0	0	0	0	0	0	0		0
	Subtotal Task 10.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	PH TOTAL HOURS	36	168	136	96	272	20	12		722
	TOTAL ALL TASKS	\$ 7,560.00	\$ 32,760.00	\$ 24,480.00	\$ 15,360.00	\$ 34,000.00	\$ 2,000.00	\$ 1,200.00	\$ 105,127.00	\$ 222,487.00

PH Consulting LLC Summary of Direct Labor Costs Effective January 1, 2021-December 31, 2021	
Job Classifications	Maximum Billing Rate
Quality Manager	\$ 225.00
Principal	\$ 215.00
Sr Project Manager	\$ 205.00
Project Manager	\$ 195.00
Senior Traffic Engineer	\$ 185.00
Project Engineer	\$ 175.00
Associate Engineer	\$ 125.00
Assistant Transportation Engineer	\$ 120.00
Senior Construction Manager	\$ 145.00
Construction Manager	\$ 125.00
Construction Inspector	\$ 115.00
Engineering Intern II	\$ 65.00
Engineering Intern I	\$ 50.00
CAD Designer III	\$ 145.00
CAD Designer II	\$ 135.00
CAD Designer I	\$ 115.00
CAD Technician II	\$ 95.00
CAD Technician I	\$ 85.00
Marketing Lead	\$ 105.00
Office Administrator	\$ 110.00
Office Assistant	\$ 85.00
Direct non-salary costs will be billed at actual costs. Subconsultants will be marked up 10%. Direct Mileage will be billed at current approved IRS mileage rate.	

EXHIBIT B
Subcontractors/Subconsultants


Below is a list of approved subcontractors/subconsultants. If left blank, there are no approved subcontractors or subconsultants.

The Blueline Group, AXIS Survey, Alfred Benesch & Co

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: November 8, 2021

AGENDA ITEM:	
Interlocal Agreement with Snohomish County Public Works for Municipal Road and Street Services	
PREPARED BY:	DIRECTOR APPROVAL:
Jeff Laycock, Director of Engineering and Transportation Services	
DEPARTMENT:	
Public Works	
ATTACHMENTS:	
Interlocal Agreement with Snohomish County Public Works for Municipal Road and Street Services	
BUDGET CODE:	AMOUNT:
N/A	N/A
SUMMARY:	

The City currently has an interlocal agreement in place with Snohomish County Public Works for municipal road and street services that was entered into on November 15, 2013. Under this agreement, the City can request assistance from the County on small capital construction projects, not to exceed \$10,000 or to request maintenance services, as shown in Appendix A and B.

The County desires to renew this agreement through December 31, 2026. In addition, the County desires this to be a reciprocal agreement in which the County could request the City to perform work on behalf of the County. The City would likely not have the capacity or desire to provide services to the County and the agreement is in no way obligating the City to perform services for the County. However, in the event the need arises and the City is willing to fill that need, the County would have this option under the new agreement. The County has similar agreements with other jurisdictions and it is their desire to keep all agreements the same.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign and execute the Interlocal Agreement with Snohomish County Public Works for Municipal Road and Street Services.

RECOMMENDED MOTION:

I move to authorize the Mayor to sign and execute the agreement.

INTERLOCAL AGREEMENT FOR MUNICIPAL ROAD AND STREET SERVICES WITHIN THE CITY OF MARYSVILLE

This INTERLOCAL AGREEMENT FOR MUNICIPAL ROAD AND STREET SERVICES WITHIN THE CITY OF MARYSVILLE (this “Agreement”), is made and entered into, by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the “County”), and the CITY OF MARYSVILLE, a Washington municipal corporation (the “City”) pursuant to Chapter 39.34 RCW.

RECITALS

A. Pursuant to an Interlocal Agreement for Municipal Road and Street Services within the City of Marysville (hereinafter “the Original Agreement”) dated November 15, 2013, the County has historically performed street and road services for the City.

B. The County and the City agree that it is mutually beneficial for the County and the City to continue working together cooperatively. Pursuant to this Agreement, chapter 39.34 RCW, RCW 35.77.020 through .040 and RCW 36.75.207, the City and County wish to both provide and receive street and road services from one another.

C. It is the intention of the parties that the duties and obligations of this Agreement substitute for, and supersede the duties and obligations of, the Original Agreement as set forth in Section 17.1 below.

D. Pursuant to Section 4 below, the requesting party shall reimburse the performing party for its actual costs incurred in performing the requested services, including time, labor, equipment, materials, and administrative overhead, all as more fully described in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the City agree as follows:

1. Purpose of Agreement.

This Agreement is authorized by and entered into pursuant to chapter 39.34 RCW, RCW 35.77.020 through .040 and RCW 36.75.207. The purpose and intent of this Agreement is for the County and the City to work together to design and construct small capital projects on City and County streets and bridges and to maintain City and County streets and bridges.

2. **Effective Date and Duration.**

This Agreement shall not take effect unless and until it has been duly executed by both parties and either filed with the County Auditor or posted on the County's Interlocal Agreements website. This Agreement shall remain in effect through December 31, 2026, unless earlier terminated pursuant to the provisions of Section 14 below; PROVIDED HOWEVER, that the term of this Agreement may be extended or renewed for up to two (2) additional three (3) year terms by written notice from the County to the City, PROVIDED FURTHER that each party's obligations after December 31, 2021, are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with applicable law.

3. **Administrators.**

Each party to this Agreement shall designate an individual (an "Administrator"), who may be designated by title or position, to oversee and administer such party's participation in this Agreement. The parties' initial Administrators shall be the following individuals:

County's Initial Administrator:

Doug McCormick, P.E., County Engineer
Snohomish County Public Works
3000 Rockefeller Avenue M/S 607
Everett, WA 98201

City's Initial Administrator:

Jeff Laycock, PE, Director
Public Works Engineering and
Transportation Services
80 Columbia Avenue
Marysville, WA 98270

Either party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other party

4. **Scope of Services.**

The scope of the road and street services (the "Services") includes but shall not be limited to the following:

- a. Construction of small capital projects on City or County streets and bridges, not subject to mandatory competitive bidding, as determined by the City or County, and which do not exceed \$10,000 for a single project or activity as established by state law.
- b. Maintenance services on City or County streets and bridges (including, but not limited to the list of municipal road and street services contained in Appendix A and B), to maintain the facility, as nearly as practical in its original as constructed condition or its subsequently improved condition, and the operation of roadway facilities and services to provide satisfactory and safe motor vehicle transportation.

- c. Engineering and administrative services including clerical services, necessary for the planning, establishment, construction, and maintenance of the streets and bridges of the City or County.

5. Process for Delivery of Services.

5.1 Submission of Work Orders. If the City or County (the “requesting party”) desires that the other party perform (the “performing party”) any of the Services, the requesting party shall submit to the performing party’s Administrator, or his or her designee, a Work Order in substantial form to that attached hereto in Appendix C. The performing party shall complete a Work Order in which it shall describe in detail the Services to be performed and shall state the desired completion date. The performing party may in its sole discretion require additional information from the requesting party, including but not limited to, a road plan and profile or sketches. Neither party shall not submit any Work Orders for which the cost for design, right-of-way acquisition, construction, or maintenance are reimbursable with Federal funds or Federal grants.

5.1.1 Work Orders for Winter Maintenance. Either party, at its own discretion, may submit an annual Work Order for winter maintenance operations. Any such annual Work Order shall include a plan identifying the routes on which the requesting party desires winter maintenance services to be performed. Unless otherwise notified by the requesting party, the performing party will conduct winter maintenance operations on the roads and streets identified in the plan at those times the performing party has mobilized winter operations in the general area. Provided an annual Work Order request has been submitted by the requesting party and accepted by the performing party, individual Work Order requests will not be required to initiate a response to snow and ice events.

5.1.2 Work Orders for Ongoing Maintenance. Either party, at its own discretion, may submit an annual Work Order for ongoing maintenance operations. Any such annual Work Order shall include a plan identifying the routes on which the requesting party desires ongoing maintenance and describe in detail the maintenance operations requested. Unless otherwise notified by the requesting party, the performing party will conduct ongoing maintenance operations on the requesting party’s roads and streets identified in the plan. Provided an annual Work Order request has been submitted by the requesting party and accepted by the performing party, individual Work Order requests will not be required to initiate the performance of ongoing maintenance operations.

5.1.3 Work Orders for Emergency Response Services. Either party, at its own discretion, may submit an annual Work Order for emergency response services. Any such annual Work Order shall include a plan identifying triggering emergency events and the routes on which the requesting party desires emergency response services as well as describe in detail the emergency operations requested. Unless otherwise notified by the requesting party, the performing party will conduct emergency response operations on the roads and streets identified in the plan upon the occurrence of an emergency event. Provided an annual Work Order request has been submitted by the requesting party and accepted by the performing party, individual Work Order requests will not be required to

initiate the response to an emergency event.

5.2 Response to Work Orders. Upon receipt of a Work Order, the performing party shall review the Services requested therein. In its sole discretion, the performing party may agree to accept or reject the Work Order. Should the Work Order be rejected, the performing party shall make a notation to that effect on the Work Order and return it to the requesting party. Should the Work Order be accepted, the performing party shall (1) make a notation to that effect on the Work Order, and (2) prepare an Estimate of the time and costs for the requested Services as well as the time and cost of preparing said Estimate, which it will attach to the Work Order. The Estimate is non-binding and does not constitute a bid or contract maximum, and the requesting party shall remain liable for the entire actual cost as described in Section 8 below. Once the Estimate has been attached to the Work Order, the Work Order and Estimate shall be returned to the requesting party.

5.3 Notice to Proceed. Upon receipt of a responsive Work Order and Estimate the requesting party may issue a written Notice to Proceed authorizing the performing party to perform the requested Services. The issuance of a Notice to Proceed shall constitute a representation by the requesting party that (1) it finds the Estimate acceptable, and (2) sufficient funds are appropriated to cover the cost of the Services.

5.4 Performing Party. Upon issuance of a Notice to Proceed, the Administrators or their designated agents shall finalize working procedures associated with the delivery of the Services. The performing party shall furnish and supply all necessary labor, supervision, machinery, equipment, material and supplies other than those required to be furnished by the requesting party, PROVIDED HOWEVER that the performance of work shall be subject to availability of personnel, equipment, and materials necessary to perform the Services without unduly disrupting the normal operations and functions of the performing party. The performing party shall notify the requesting party of any inability to perform under this Agreement, including postponement of Services due to workload constraints.

5.5 Changes to Work Orders by the Requesting Party. The requesting party may make changes to the requested Services by submitting a new Work Order outlining in detail the desired changes to the Services. The performing party, in its sole discretion, may accept or reject the new Work Order, PROVIDED HOWEVER that the acceptance is not required where the requesting party is terminating work pursuant to Section 14.2 below. The requesting party shall be liable for all increases in cost, if any, which may be incurred by changes to the Services, including but not limited to clean-up and striping costs and any non-cancelable costs.

5.6 Changes to Work Orders by the Performing Party. After issuance of a Notice to Proceed, the performing party shall provide the requesting party with written notification of any changes to the Work Order required by the performing party when such changes will substantially alter the nature of the Services or the Estimate. The performing party shall obtain the requesting party's written approval to any such changes before implementing them.

5.7 Authority of Administrators. By entering into this Agreement and upon it becoming effective as described in Section 2 above, both parties authorize their respective Administrators to accept, deny, and negotiate the Work Orders described in this Section 4, including any associated increase, decrease, or other change to the costs of the Services.

6. Services Provided.

6.1 Lead Agency. The County shall serve as the lead agency for the Services provided by the County. The City shall serve as the lead agency for Services provided by the City.

6.2 Services. The performing party shall solely determine the schedule for the Services. The performing party will provide the requesting party with a full and complete copy of any construction design plans. The performing party shall segregate the costs of the Services from other work they may be performing.

6.3 Independent Contractor. The performing party shall perform the work as an independent contractor and not as an agent, employee, or servant of the other party. The performing party shall be solely responsible for control, supervision, direction and discipline of its personnel, who shall be employees and agents of the performing party.

7. Cooperation by Requesting Party.

7.1 Agreement to Cooperate. The requesting party shall cooperate in completing the Services. The requesting party shall make its personnel, including but not limited to its Police and Public Works Department staff, available at reasonable times and upon reasonable advance notice, for purposes of facilitating the performance of the Services, including but not limited to any safety planning meeting the performing party schedules for purposes of discussing traffic control issues. Upon request by the performing party's Administrator or his or her agent and before any work is commenced, the requesting party shall order the temporary closing to traffic of all roads and streets, or portions thereof, as deemed necessary by the performing party, in its sole discretion, to perform the Services.

7.2 Grant of Access. The requesting party certifies that it owns the real property or right-of-ways upon which the Services shall be rendered and additional real property or right-of-ways are not needed to complete the Services. The requesting party further grants to the performing party, for the purpose of performing Services pursuant to this Agreement, permission and right-of-entry on, over, under, above and through real property owned by the requesting party and those rights-of-way and WSDOT rights-of-way that the requesting party is responsible for maintaining that are necessary or convenient for the performing party to access in performing the Services.

7.3 Coordination with WSDOT and Utilities. Should, in providing the Services, it become necessary or convenient for the performing party to enter in, on, over, under or above a right-of-way owned by WSDOT or any utility or impact any equipment owned by WSDOT or any utility, the performing party shall notify the requesting party,

and the requesting party shall cooperate in the efforts to coordinate with WSDOT and/or the utility to obtain any required approvals and/or permits authorizing such activity.

7.4 Permitting. At least thirty (30) days prior to the delivery of any requested Services, the requesting party shall obtain and provide to the performing party copies of all permits necessary for the Services.

7.5 Party's Powers. Nothing contained herein shall be construed as in any way divesting either party of any of its powers with respect to the supervision, management, and control of roads and streets within its boundaries.

8. Payment by Requesting Party.

8.1 Actual Costs. The performing party shall be reimbursed in full by the requesting party for the actual costs of the Services provided on a time and materials basis plus an administrative overhead charge as described in Section 8.2 below. The performing party agrees that only those costs directly allocable to the Services under generally accepted accounting procedures will be charged to the requesting party. In computing the cost of the use of machinery and equipment, the performing party shall charge the requesting party for the full cost to the performing party of rental machinery and equipment and any operator furnished therewith and/or the performing party's equipment rental rate on performing party-owned machinery and equipment.

8.2 Administrative Overhead. For the purpose of fixing the compensation to be paid by the requesting party for the Services, it is agreed that there shall be included in each billing, to cover administrative costs, an amount not to exceed each party's administrative rate. The County rate is currently set at 20% of the total labor cost to the County for those County employees performing Services for the City under this Agreement. The City rates is currently set at 20% of the total labor cost to the City for those City employees performing Services for the County under this Agreement. Charges for administrative costs are in addition to charges for materials and equipment. This rate may be reasonably adjusted annually to reflect changes in actual administrative costs without the need for a formal amendment of this Agreement.

8.3 Invoicing and Payment. The performing party shall invoice the requesting party or its designee for all Services performed by the performing party. The requesting party shall remain liable for complete and timely payment of all amounts invoiced. Invoices may be sent monthly, quarterly or on any other schedule that is mutually convenient to the parties. The performing party shall include in each invoice, documentation of all costs for labor, materials and equipment included in the invoice. Unless the requesting party delivers written notice to the performing party disputing the amount of a particular invoice, the requesting party shall make payment on all invoices submitted by the performing party within thirty (30) days of the invoice date. Amounts not paid within 30 days of the invoice date shall thereafter accrue interest at a rate of twelve percent per annum or one percent per month.

8.4 Records. The parties shall maintain accurate time and accounting records related to the Services for a period of three (3) years following final payment.

9. Indemnification/Hold Harmless.

Each party shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments, and/or awards of damages, of whatsoever kind arising out of, or in connection with, or incident to the services associated with this Agreement caused by or resulting from each party's own negligent acts or omissions. Each party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. Each party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. Liability Related to City Ordinances, Policies, Rules and Regulations.

In executing this Agreement, the performing party does not assume liability or responsibility for or in any way release the requesting party from any liability or responsibility which arises in whole or in part from the existence or effect of the requesting party's ordinances, policies, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such ordinance, policy, rule or regulation is at issue, the requesting party shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the City, the County, or both, the requesting party shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

11. Insurance.

Each party shall maintain its own insurance and/or self-insurance for its obligations from damage to property and/or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying part to the indemnified party(s). Each Party shall provide the other with a certificate of insurance or letter of self-insurance annually as the case may be.

Each party shall provide or purchase workers' compensation insurance coverage to meet the Washington State Industrial Insurance regulations and cause any subcontractors working on behalf of said party to also carry such insurance prior to performing work under the Agreement.

12. Compliance with Laws.

In the performance of its obligations under this Agreement, each party shall comply with all applicable federal, state, and local laws, rules and regulations.

13. Default and Remedies.

13.1 Default. If either the County or the City fails to perform any act or obligation required to be performed by it hereunder, the other party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have thirty (30) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default ("Default") under this Agreement; provided, however, that if the non-performance is of a type that could not reasonably be cured within said thirty (30) day period, then the non-performing party shall not be in Default if it commences cure within said thirty (30) day period and thereafter diligently pursues cure to completion.

13.2 Remedies. In the event of a party's Default under this Agreement, then after giving notice and an opportunity to cure pursuant to Section 13.1 above, the non-Defaulting party shall have the right to exercise any or all rights and remedies available to it in law or equity.

14. Early Termination.

14.1 30 Days' Notice. Except as provided in Section 14.2 below, either party may terminate this Agreement at any time, with or without cause, upon not less than thirty (30) days' advance written notice to the other party. The termination notice shall specify the date on which the Agreement shall terminate.

14.2 Lack of Funding. This Agreement is contingent upon governmental funding and local legislative appropriations. In the event that funding from any source is withdrawn, reduced, limited, or not appropriated after the effective date of this Agreement, this Agreement may be terminated by either party immediately by delivering written notice to the other party. The termination notice shall specify the date on which the Agreement shall terminate.

14.3 Calculation of Costs Due Upon Early Termination. Upon early termination of this Agreement as provided in this Section 14, the City and County shall pay for all Services performed up to the date of termination, as well as the costs of any and all non-cancelable obligations. The County and County shall notify the other within thirty (30) days of the date of termination of all remaining costs including non-cancelable costs.

Termination costs charged shall not exceed the actual costs incurred as a result of early termination. No payment shall be made for any expense incurred or Services performed following the effective date of termination unless authorized in writing by the other party.

15. Dispute Resolution.

In the event differences between the parties should arise over the terms and conditions or the performance of this Agreement, the parties shall use their best efforts to resolve those differences on an informal basis. If those differences cannot be resolved informally, the matter shall be referred for mediation to a mediator mutually selected by the parties. If mediation is not successful, either of the parties may institute legal action for specific performance of this Agreement or for damages.

16. Notices.

All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 3 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

17. Miscellaneous.

17.1 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein, including but not limited to the Original Agreement PROVIDED HOWEVER, that the parties' duties and obligations under the Original Agreement regarding insurance and indemnification shall survive as to any claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorneys' fees in defense thereof, known or unknown, for injury, sickness, disability or death to persons or damage to property or business, arising prior to the Effective Date of this Agreement. This Agreement may not be modified or amended in any manner except by a written document executed with the same formalities as required for this Agreement and signed by the party against whom such modification is sought to be enforced.

17.2 Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

17.3 Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in

and for Snohomish County. In the event that a lawsuit is instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.

17.4 Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

17.5 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

17.6 No Waiver. A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

17.7 No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

17.8 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

17.9 No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

17.10 No Separate Entity Necessary. The parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

17.11 Ownership of Property. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either party in connection with its performance under this Agreement will remain the sole property of such party, and the other party shall have no interest therein.

17.12 No Third Party Beneficiaries. This Agreement and each and every provision hereof is for the sole benefit of the City and the County. No other persons or parties shall be deemed to have any rights in, under or to this Agreement.

17.13 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last party to sign.

COUNTY:

CITY:

Snohomish County, a political subdivision of the State of Washington

City of Marysville, a Washington municipal corporation

By _____
County Engineer

By _____
Title:

Approved as to Form:

Approved as to Form:

/s/ George Marsh 10/06/2021
Deputy Prosecuting Attorney

City Attorney

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APPENDIX A
MUNICIPAL ROAD AND STREET SERVICES
Snohomish County - Road Maintenance Division

Work Operations (Estimates provided on a per project basis)
Drainage:
<ul style="list-style-type: none"> • Catch Basin Routine Maintenance: Manually clean catch basins to ensure drainage flow is not restricted. This includes removing debris from the inlet and/or cleaning the catch portion of the structure.
<ul style="list-style-type: none"> • Catch Basin Mechanical Cleaning: Mechanically remove sediment and debris from the catch basin using a vactor or eductor truck using vacuum hose and water jet as necessary to ensure drainage system remains free of material and flows are not restricted.
<ul style="list-style-type: none"> • Culvert Cleaning, and Inspection, Manual: Inspecting and manually cleaning culvert inlets and outlets.
<ul style="list-style-type: none"> • Culvert Cleaning, Mechanical: Use mechanical equipment for cleaning the culvert such as vactor, flusher or a backhoe to clean inlets and outfalls to remove obstructions.
<ul style="list-style-type: none"> • Detention/Retention Basin Maintenance: Remove accumulated sediment, vegetation and debris from detention/retention basins to maintain design capacity to allow for proper function of the structure. Removal may be by manual or mechanical means and may include cleaning inlet and outlet grates/pipes.
<ul style="list-style-type: none"> • Ditch Maintenance: Cleaning or re-shaping a man-made, open, storm water conveyance system that was constructed to carry storm water onto, through, or away from the highway right-of-way (i.e., not a modified stream). This operation does not include the acquisition of any permitting if required.
<ul style="list-style-type: none"> • Underground Retention/Detention Facility Maintenance: Mechanically or manually clean and/or inspect underground detention/retention facilities on the right of way to maintain proper design capacity for the structure. This activity requires compliance with confined space regulations.
Pavement Maintenance and Repair:
<ul style="list-style-type: none"> • Crack and Joint Sealing: Repair defects in pavement surface by installing crack filling material to prevent water from entering the sub-grade. Cracks are cleaned and routed prior to filling.
<ul style="list-style-type: none"> • Install Lane Markers/Raised Pavement Markers: Install lane markers to replace worn markers or to facilitate design changes in the channelization.

<ul style="list-style-type: none"> • Installation, Maintenance and Repair of Guardrail: Maintain and repair guardrail; adjust cable tension; repair damage caused by collisions; upgrade terminal end sections; adjust height and alignment; Install new guardrail to design specifications.
<ul style="list-style-type: none"> • Manual Pavement Patching: To repair the road surface by hand spreading asphalt mix (typically hot mix), raking to establish proper grade and compacting with a roller or other available means. Repair potholes, edge failures, dips, etc.
<ul style="list-style-type: none"> • Pavement Markings -Thermo-plastic/Durable: Apply durable channelization material (typically thermo-plastic) to the roadway to delineate the lane limits.
<ul style="list-style-type: none"> • Pavement Markings - Paint: Applying channelization to the roadway surface to delineate lane limits, such as edge lines (including gore lines), skip lines, no pass lines, centerlines, etc.
<ul style="list-style-type: none"> • Sweeping & Cleaning Pavement with Mechanical Pickup Broom: Use mechanical pickup sweeper to remove sand, dirt and accumulated debris from the roadway and shoulders. Special consideration: An advance person may be needed to pick up large debris prior to the sweeping operation. Additional trucks may be needed to haul the sweeper spoils to an approved waste site. 'No Parking' signs may be needed in advance.
<ul style="list-style-type: none"> • Traffic Sign Repair, Replacement, Maintenance and Installation: Repair, replace, maintain; or install new traffic signs to ensure that operational safety is maintained on the roadway system.
<p>Shoulder Maintenance:</p>
<ul style="list-style-type: none"> • Grade / Reshape Shoulders: Use motor grader to pull aggregate from shoulder slope back towards the roadway to eliminate the vertical edge at the edge of pavement.
<ul style="list-style-type: none"> • Shoulder Buildup Removal: Use a motor grader and belt loader to remove buildup of sand, dirt and vegetation at the edge of shoulder to allow for proper drainage.
<p>Snow & Ice:</p>
<ul style="list-style-type: none"> • Anti-icing and De-icing Application, Liquids: Apply anti-icing liquid to the roadway to reduce the probability of ice forming on the roadway. Apply de-icing liquids to the roadway to aid in ice removal.
<ul style="list-style-type: none"> • Plowing/Sanding/Solid Deicer Application: Remove accumulated snow and slush from the roadway and shoulder of the roadway with a truck-mounted snowplow. Apply sand or other abrasives to roadways to improve traction during freezing weather and snowstorm conditions. This may include sand applied with pre-wet salt systems or blended with salt in solid form.
<p>Vegetation:</p>
<ul style="list-style-type: none"> • Control Vegetation Obstructions - Manual: Remove vegetation obstructions by manual methods, i.e. shovels, weed eaters, cutters or pulling weeds, to ensure visibility of signing and intersections.
<ul style="list-style-type: none"> • Cutting/Pruning/Selective Thinning: Use hand tools to cut, trim or thin small amounts of plants in or around planting beds.

<ul style="list-style-type: none"> • Noxious and Nuisance Weed Control - Spot Spray Non-power Equipment: Use hand sprayer to control noxious weeds, as identified on the state or county noxious weed list, with approved herbicides applied at the recommended application rate. Also manually spray nuisance weeds. An herbicide application record is required for the treated area.
<ul style="list-style-type: none"> • Nuisance Vegetation Control - Manual: Use of manual means, i.e., hand operated trimmers, mowers, lopping shears, hand sprayer, saws, axes, to control undesirable vegetation obstructing line of sight or clear zone i.e., alders, blackberries and certain species of grasses.
<ul style="list-style-type: none"> • Nuisance Vegetation Control - Mechanical: Use power-operated equipment, i.e., mowers and brush cutters, to control undesirable vegetation i.e., alders, and blackberries, etc.
<ul style="list-style-type: none"> • Tree Trimming/Tree Canopy Maintenance: Use boom truck/bucket truck, saws and chippers to trim trees and canopied/encroaching shrubs to maintain clear zones, sight distance, pedestrian access, etc.
<ul style="list-style-type: none"> • Roadside Mowing: Mow with mechanical mower to control grass height and trim undesirable vegetation.

Other services provided:
<ul style="list-style-type: none"> • Call-out Response for urgent or emergency situations • Catch Basin/ Manhole Repair or Replacement • Chip Seals; Project or Patching • Culvert Repair or Replacement • Guidepost and Delineator Replacement • Hauling and Disposal of Waste Material • Hydro Seeding and Mulching • Instructor, Equipment Training and Other Training Courses • Maintenance and Repair of Concrete Structures • Mechanical Pavement Patching, Paverbox • Noxious Weed Control - Mechanical • Noxious Weed Control - Manual • Pavement Milling/Full Depth Repair (small, localized areas) • Pavement Patching with Subgrade Repair • Rip Rap and Cribbing Repair • Seeding, Mulching, and Planting including native species. • Shoulder Washout Repair • Slope Repair, Slide Clean up & Maintenance • Traffic Control for Mobile Operations • Traffic Control for Stationary Operations • Vactor Waste Recycling/Disposal

**APPENDIX B
MUNICIPAL ROAD AND STREET SERVICES
Snohomish County – Bridge Operations**

Work Operations (Estimates provided on a per project basis)
Bridge Inspection:
<ul style="list-style-type: none">• Bridge Inspection Services: Routine and special bridge inspections, completion of bridge inspection reports (including photos and descriptions of the inspection), and entry of bridge inspection data into the Washington State Bridge Inventory System. The County’s performance of inspections and reports shall be consistent with the National Bridge Inspection Standards as set forth in the current version of the Washington State Bridge Inspection Manual.
Other services provided:

APPENDIX C
MUNICIPAL ROAD AND STREET SERVICES
Snohomish County - Road Maintenance Division
Engineering Services Division – Bridge Group

Work Order Forms

Samples provided below are to be used for Work Order requests made to Snohomish County. Work Order request made to the City shall be provided on a City Work order form. The City Work Order form does not need to be identical to the County Work Order but should contain the same elements including an approval section.



ROAD MAINTENANCE AID AGREEMENT WORK ORDER

Agency/Jurisdiction: _____

Submitted By: _____ **Date Submitted:** _____

Contact Info: _____ **Requested Completion Date:** _____

Authorized By: _____ **Position/Title:** _____

(Signature from Agency/Jurisdiction for approval to proceed per Estimated Cost Below)

Date Approved: _____

WORK TO BE PERFORMED (Description and/or Sketch) (Attach Additional Pages If Needed)

Once completed please email to: Contact.PWRoad@snoco.org

For Completion by Snohomish County Road Maintenance Division

Estimated Cost For Services: _____ Reimbursable Service Number: **RR** _____

Approved By:

RM Operations Manager: _____ Date: _____

RM Director: _____ Date: _____

Date of Completion: _____ By: _____



PUBLIC WORKS BRIDGE INSPECTION SERVICES WORK ORDER

Agency/Jurisdiction: _____

Submitted By: _____ **Date Submitted:** _____

Contact Info: _____ **Requested Completion Date:** _____

Authorized By: _____ **Position/Title:** _____

(Signature from Agency/Jurisdiction for approval to proceed per Estimated Cost Below)

Date Approved: _____

WORK TO BE PERFORMED (Description) (Attach Additional Pages If Needed)

Once completed please email to: Contact.PWBridge@snoco.org

For Completion by Snohomish County Engineering Services Division

County's Estimated Cost For Services: _____

County Reimbursable Service Number: **RR** _____

County Work Order Number: _____ (progressive number assigned by order of request)

Approved By:

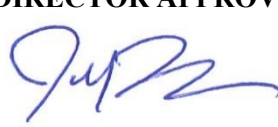
Bridge Group Supervisor: _____ Date: _____

ES Director: _____ Date: _____

Date of Completion: _____ By: _____

**CITY OF MARYSVILLE AGENDA BILL
EXECUTIVE SUMMARY FOR ACTION**

CITY COUNCIL MEETING DATE: November 8, 2021

AGENDA ITEM:	
Maintenance Agreement between the City of Marysville and WSDOT for the Roundabout East of the I-5/SR 529 Interchange	
PREPARED BY:	DIRECTOR APPROVAL:
Jeff Laycock, Director of Engineering and Transportation Services	
DEPARTMENT:	
Public Works	
ATTACHMENTS:	
Maintenance Agreement	
BUDGET CODE:	AMOUNT:
N/A	N/A
SUMMARY:	

On January 25, 2021, Council authorized an agreement with WSDOT to fund a gateway sign to be located within the SR 529 roundabout as part of the NB Marine View Drive to SR 529 Corridor and Interchange Improvements project. The roundabout will also include landscaping and City standard decorative street lighting which will be funded by WSDOT under the project. Once complete, the gateway sign, landscaping and street lighting system will be owned by the City.

The attached maintenance agreement is required to establish both City and WSDOT responsibilities. The City will be responsible for the maintenance and repairs of the gateway sign, landscaping and street lighting system. WSDOT is responsible for establishment of the landscaping as part of the project and the cost of electricity for the street lighting system.

RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to sign and execute the enclosed Agreement with WSDOT for the SR 529 roundabout gateway sign treatment.

PROPOSED MOTION: I move to authorize the Mayor to sign and execute the agreement.

**GMB 1176 Maintenance Agreement between the City of Marysville
and
The Washington State Department of Transportation
Roundabout East of the I-5/SR 529 Interchange**

This Agreement is between the Washington State Department of Transportation, hereinafter “WSDOT,” and the City of Marysville, Washington, hereinafter the “City,” collectively the “Parties” and individually the “Party.”

RECITALS

1. WSDOT will carry out the I-5 NB Marine View Drive to SR 529 Corridor and Interchange Improvements Project, hereinafter the “Project.” The Project includes construction of a new roundabout located on the east side of the I-5/SR 529 interchange, as shown in Exhibit A.
2. Under the terms of Agreement GCB 3347, the Parties agreed that the Project would include the construction at the City’s cost of a gateway sign, hereinafter the “Sign,” in the roundabout.
3. The Project will install Luminaires System (which includes poles, illumination components, junction boxes, conduit, wiring, and an electrical service cabinet) and Landscaping at the roundabout at WSDOT’s cost, as shown in Exhibit A. Once construction is completed the Sign, Landscaping, and Luminaires System will be owned by the City.
4. WSDOT and the City wish to define WSDOT’s and the City’s maintenance responsibilities for the Sign, Landscaping, and Luminaires System placed within WSDOT’s right of way jurisdiction.

NOW THEREFORE, pursuant to RCW 47.28.140, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibit A that is incorporated herein by this reference, **IT IS MUTUALLY AGREED AS FOLLOWS:**

1. DEFINITIONS

- 1.1 “Plant Establishment” shall mean caring for all plants planted on the Project and caring for the planting and seeding areas within the Project limits for the first five (5) years following completion of the Project to ensure continued healthy growth to achieve a sustainable condition and weed control pursuant to WSDOT’s *Roadside Policy Manual* M 3110.

2. CITY MAINTENANCE RESPONSIBILITIES

- 2.1 Following the completion of construction, the City, at the City’s sole cost and expense, agrees to maintain and to provide all materials and labor associated with the replacement, repairs, and any other incidentals for the Sign, and Luminaires System as constructed within the roundabout shown in Exhibit A.
- 2.2 Following completion of WSDOT obligation for Plant Establishment, the City shall at the City’s sole cost and expense, maintain and provide all materials and labor associated with the replacement, repairs, and any other incidentals for the Landscaping within the roundabout shown in Exhibit A, including weed control and plant replacement.

- 2.3 Following the completion of construction, the City, at the City's sole cost and expense, shall maintain the Sign, Landscaping, and Luminaires System in the roundabout, including but not limited to repair of third-party damages to the Sign, Landscaping, and Luminaires System, and removal of graffiti or other unauthorized markings on the Sign and Luminaires System. The City agrees to remove any offensive language or graphics from the Sign and Luminaires System within one (1) working day of notification.
- 2.4 Following the completion of construction, the City, at the City's sole cost and expense, shall keep the Sign free of visually obstructive vegetation.
- 2.5 Following the completion of construction, the City shall label its Luminaires System service cabinet with City contact information for the public. In carrying out maintenance and repair of the Luminaires System, the City shall repair and replace failed poles, illumination components, junction boxes, conduit, wiring, and the electrical service cabinet as needed. At least once per year, the City shall provide the following maintenance for the Luminaires System service cabinet:
- 2.5.1 Check all cabinet wiring and terminals for tightness;
 - 2.5.2 Check cabinet seals, locks, hinges, and vent fan paint, and remove any graffiti for proper operation and appearance;
 - 2.5.3 Check that the label providing City contact information for the public is legible;
 - 2.5.4 Note any deficiencies that need to be corrected and correct those deficiencies.
- 2.6 Modification, replacement or relocation of the Sign, Landscaping, or Luminaires System:
- 2.6.1 If the City determines that it is necessary to replace or modify the Sign, Landscaping, or Luminaires System, any replacement or modification shall require prior written approval, and acceptance, by WSDOT. Such relocation and/or removal shall be done in coordination with WSDOT and abide by the traffic control provisions of Section 2.7.
 - 2.6.2 If there is a need to replace a luminaire in the Luminaires System, the City shall provide and install a replacement luminaire within a period of time agreed to by the Parties. Once the City decorative luminaire pole is installed, the City shall assume responsibility for the maintenance and operation in accordance with this section.
 - 2.6.3 In the event of a state highway project that requires removal or relocation of the Sign, the City agrees to pay WSDOT the actual direct and related indirect costs of relocation or removal of the Sign.
- 2.7 Traffic Control
- 2.7.1 The City shall not perform any work authorized under this Agreement in such a manner as to conflict with, impede or disrupt in any way state highway construction, operation, or maintenance, or interfere with or endanger the safety of the traveling public. If it is likely that the City's work shall conflict with, impede or disrupt in any way state highway construction, operation or maintenance, or interfere with or endanger the safety of the travelling public, then the City shall submit traffic control plans to the WSDOT Construction Traffic Control Operations Manager for the Northwest Region (contact information in Section 7), for review and approval prior to the start of the City's work.

WSDOT shall review and comment on the proposed traffic control plans or issue written approval within fifteen (15) working days after receipt of the plans.

- 2.7.2 The City agrees that all traffic control for any work within the roundabout in WSDOT right of way shall be in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) and/or the State's Work Zone Traffic Control Guideline, M 54-44.
- 2.8 Third Party Damage
- 2.8.1 The City shall be responsible for repairing all third party damage to the Sign, Landscaping, or Luminaires System at the City's expense.
- 2.8.2 If WSDOT has information concerning third party damage to the Sign, Landscaping, or Luminaires System, it shall provide the information to the City after receipt of request for records from the City.
- 2.9 Roundabout lighting is a requirement of WSDOT's Design Manual M 22-01. The City shall ensure that the Luminaires System supports the required light level, uniformity, and veiling luminance as specified in Design Manual M 22-01, current edition.
- 2.10 Locates: At the sole cost and expense of the City, the City, as the Party responsible for the maintenance and operation of the Luminaires System pursuant to this Agreement, will comply with the requirements of Chapter 19.122 RCW, including, but not limited to:
- 2.10.1 The City will notify the Washington 811 service that the City is responsible for the Luminaires System and provide a map of the Luminaires System area to the Washington 811 service.
- 2.10.2 Whenever the Washington 811 service notifies the City of a locate request in the Luminaires System area, the City will perform the locate and mark the location of underground facilities as specified by RCW 19.122.030 and RCW 19.122.031, as applicable.

3. WSDOT RESPONSIBILITIES

- 3.1 WSDOT shall be solely responsible for the cost of electricity to power the Luminaires System in the roundabout.
- 3.2 WSDOT, or its contractor, shall be solely responsible for Plant Establishment. Following completion of WSDOT's obligation for Plant Establishment, WSDOT shall provide written notice to the City that the City is obligated to assume responsibility for Landscaping maintenance at the roundabout. "Written notice" includes notice by email.
- 3.3 In the event of a state highway project that requires removal or relocation of the Landscaping, or Luminaires System, WSDOT shall send a written notice to the City of WSDOT's intention to perform such work at least thirty (30) calendar days before the work commences. WSDOT shall pay for relocation or removal of the Landscaping and/or Luminaires System.

4. DEFICIENT MAINTENANCE

- 4.1 In the event the City does not perform the work identified in Section 2, WSDOT reserves the right to perform the necessary work to the extent necessary for the safe operation and maintenance of WSDOT right of way. Should WSDOT perform such work, the City agrees to pay WSDOT the actual direct and related indirect costs in accordance with Section 4.5.
- 4.2 Should the City fail to perform its maintenance responsibilities which do not directly impact the construction, operation and maintenance of WSDOT right of way, or adversely affect the safety of the traveling public pursuant to this Agreement, WSDOT shall provide written notification to the City to perform the identified work within thirty (30) calendar days after receipt of said notification.
- 4.3 If, in the case of a deficiency that the City cannot with due diligence cure within a period of thirty (30) calendar days, the City shall proceed in good faith and the time that the City shall have to cure the defect shall be extended for a period of time as may be necessary to complete it. If the City cannot correct the noted deficiencies within thirty (30) calendar days, the City shall request in writing for the approval of a time extension to remedy those deficiencies that cannot be cured within the thirty (30) calendar day period.
- 4.4 WSDOT may perform or begin planning for the needed work at the end of the thirty (30) calendar day notice period. Should WSDOT perform such work, the City agrees to pay WSDOT the actual direct and related indirect costs in accordance with Section 4.5.
- 4.5 The City shall reimburse WSDOT for the actual direct and related indirect costs of WSDOT's work authorized by this Agreement. Upon receipt of a detailed, itemized invoice from WSDOT, the City shall make payment within thirty (30) calendar days. All sums due from the City to WSDOT and not paid within thirty (30) calendar days of the date of invoice shall bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater; provided that, if the highest rate allowable by law is less than twelve percent (12%), interest charged hereunder shall not exceed that amount. Interest shall be calculated from the thirty-first calendar day from date of invoice until the date paid. If the City objects to all or any portion of an invoice it shall notify WSDOT within twenty (20) calendar days from the date of receipt and shall pay only that portion of the invoice not in dispute. WSDOT and the City shall make every effort to settle the disputed portion, and if necessary, utilize dispute resolution as provided for in Section 9 of this Agreement. No interest shall be due on any portion of an invoice the City is determined not to owe following settlement between the Parties or completion of dispute resolution process.

5. EMERGENCY MAINTENANCE

- 5.1 In the event of an emergency involving the Sign, Landscaping, or Luminaires System that has damaged or is likely to imminently damage WSDOT right of way, the City shall perform emergency maintenance and/or repair work within one (1) working day of notification, email being acceptable, from WSDOT.
- 5.2 If the City is not available to perform the emergency maintenance and/or repair work to address the identified problem, WSDOT reserves the right to perform the emergency work. Such emergency work may be accomplished by WSDOT personnel or its authorized contractor and the City agrees to reimburse WSDOT for its actual direct and related indirect costs in accordance with Section 4.5.

6. RIGHT OF ENTRY

6.1 WSDOT hereby grants to the City and its authorized agents, contractors, subcontractors, and employees a right of entry upon all WSDOT right of way for the purpose of accomplishing the work authorized by this Agreement, subject to the traffic control provisions of Section 2.7.

7. PARTY REPRESENTATIVES

7.1 Unless otherwise stated herein, for all communications under this Agreement the Parties designate the following representatives, or their successor or designee:

City of Marysville	Washington State Department of Transportation
<p>Public Works Director City of Marysville 80 Columbia Avenue Marysville, WA 98270 360.363.8100</p>	<p>Mark Renshaw Superintendent Area 3 Maintenance Washington State Dept. of Transportation 709 North Broadway Everett, WA 98201 425.258.8310 mark.renshaw@wsdot.wa.gov</p> <p><u>Any Luminaires System Matter Also Contact:</u> Karen McKenzie Signals Maintenance Superintendent Washington State Dept. of Transportation 3700 Ninth Avenue South Seattle, WA 98134 206.442.2119 karen.mckenzie@wsdot.wa.gov</p> <p><u>Traffic Control Matters Contact:</u> Bonnie Nau Construction Traffic Control Operations Manager Washington State Department of Transportation 15700 Dayton Ave North Seattle, WA 98133 206.440.4471 naub@wsdot.wa.gov</p>

7.2 A Party may designate an alternative representative and, in this event, shall notify the other Party in writing, which includes communication by email.

8. DAMAGE TO PROPERTY

8.1 WSDOT and its authorized agents, contractors, subcontractors, and/or employees shall not damage City property while performing maintenance, operation and/or repair work authorized by this Agreement. If WSDOT, its authorized agents, contractors, subcontractors, and/or employees damages City property WSDOT agrees to be directly responsible to the City for the cost of reasonable repairs; provided that, prior to either the City or WSDOT commencing any such

repairs, the Parties shall meet and confer regarding the nature and scope of repairs that are needed and shall allocate responsibility for the work.

- 8.2 The City and its authorized agents, contractors, subcontractors, and/or employees shall not damage WSDOT property while performing maintenance, operation and/or repair work authorized by this Agreement. If the City, its authorized agents, contractors, subcontractors, and/or employees damages WSDOT property the City agrees to be directly responsible to WSDOT for the cost of reasonable repairs; provided that, prior to either the City or WSDOT commencing any such repairs, the Parties shall meet and confer regarding the nature and scope of repairs that are needed and shall allocate responsibility for the work.

9. GENERAL PROVISIONS

- 9.1 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.
- 9.2 Term: The Term of this Agreement shall commence as of the date this Agreement is executed and shall continue until the Sign, Landscaping, and Luminaires System are no longer required in WSDOT right of way.
- 9.3 Start of Work: The City agrees that its maintenance and/or repair work obligations pursuant to this Agreement shall start as soon as there has been construction and acceptance by WSDOT of the Sign and/or Luminaires System, while the City's maintenance and/or repair work obligations for the Landscaping shall start five (5) years after completion of construction of the Landscaping.
- 9.4 Termination:
- 9.4.1 WSDOT may terminate this agreement in whole or in part, without penalty or further liability in the event of the following:
- 9.4.2 Termination for Convenience
WSDOT may terminate this Agreement for convenience at any time. In such event, the terminating Party: (i) shall provide the other Party as much advance notice as reasonably possible, with no less than 30 days prior written notification; and (ii) shall not be liable to the other Party for any direct, indirect or consequential damages arising solely from the decision to terminate the Agreement.
- 9.4.3 Termination for Default
Upon prior written notice, WSDOT may terminate this Agreement for entity failure to perform or abide by any provision of this Agreement.
- 9.4.4 Termination for Cause
If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.
- 9.4.5 Termination for Withdrawal of Authority

In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement, WSDOT may terminate this Agreement by [seven (7) calendar days or other appropriate time period] written notice to Vendor. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Agreement in order to acquire similar Services from a third party.

9.4.6 Termination for Non-Allocation of Funds

If funds are not allocated to WSDOT to continue this Agreement in any future period, WSDOT may terminate this Agreement by [seven (7) calendar days or other appropriate time period] written notice. WSDOT will not be obligated to pay any further charges. WSDOT agrees to notify entity in writing of such non-allocation at the earliest possible time. No penalty shall accrue to WSDOT in the event this section shall be exercised. This section shall not be construed to permit WSDOT to terminate this Agreement in order to acquire similar Services from a third party.

- 9.5 Indemnification and Waiver: Each of the Parties shall protect, defend, indemnify, and hold harmless the other Party and its officers, officials, employees, and/or authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgements, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, that Party's obligations performed or to be performed pursuant to the provisions of this Agreement. No Party shall be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their officers, officials, employees, and/or authorized agents, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the indemnifying Party, its officers, officials, employees, and/or authorized agents.

The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees, and/or authorized agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. This indemnification and waiver shall survive the termination of this Agreement.

- 9.6 Disputes: The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this end, following the dispute resolution process in Sections 9.6.1 through 9.6.4 shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:

9.6.1 The Representatives designated in this Agreement shall use their best efforts to resolve disputes and issues arising out of, or related to, this Agreement. The Representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. The Representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.

9.6.2 A Party's Representative shall notify the other Party in writing of any dispute or issue that the Representative believes may require formal resolution according to Section 9.6.4.

The Representatives shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.

- 9.6.3 In the event the Representatives cannot resolve the dispute or issue, the City's Mayor and WSDOT's Northwest Regional Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.
- 9.6.4 In the event the City's Mayor and WSDOT's Northwest Regional Administrator, or their respective designees, cannot resolve the dispute or issue, the City and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member not affiliated with either Party. The three member Board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.
- 9.7 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each shall be solely responsible for payment of its own attorney's fees, witness fees, and costs.
- 9.8 Records and Audit: All records for maintenance, operation and/or repair work done pursuant to this Agreement shall be held and kept available for inspection and audit by WSDOT, the City and the Federal government for a period of six (6) years from the date of termination of this Agreement or any final payment authorized under this Agreement, whichever is later. Each Party shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should a Party require copies of any records from the other Party, the requesting Party agrees to pay the reasonable costs thereof. In the event of litigation or claim arising from the performance of this Agreement, the City and WSDOT agree to maintain the records and accounts until such litigation, appeal or claims are finally resolved. This section shall survive the termination of this Agreement.
- 9.9 Severability: Should any section, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected and the same shall continue in full force and effect.
- 9.10 Calendar Day: Calendar day means any day on the calendar including Saturday, Sunday or a legal local, state, or federal holiday.
- 9.11 Working Day: Working day means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.
- 9.12 Independent Contractor: Parties shall be deemed an independent contractor for all purposes, and the employees of each Party or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other Party.
- 9.13 Assignment: Except as otherwise provided herein, a Party to this Agreement shall not assign, delegate or transfer this Agreement or the obligations incurred hereunder, in whole or in part, by operation of law or otherwise, or subcontract for the management or operation of their respective responsibilities, or parts thereof, without the prior written consent of the other Parties to this Agreement, which approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date last signed below.

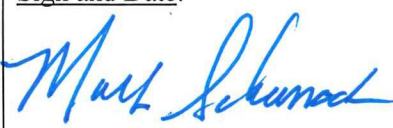
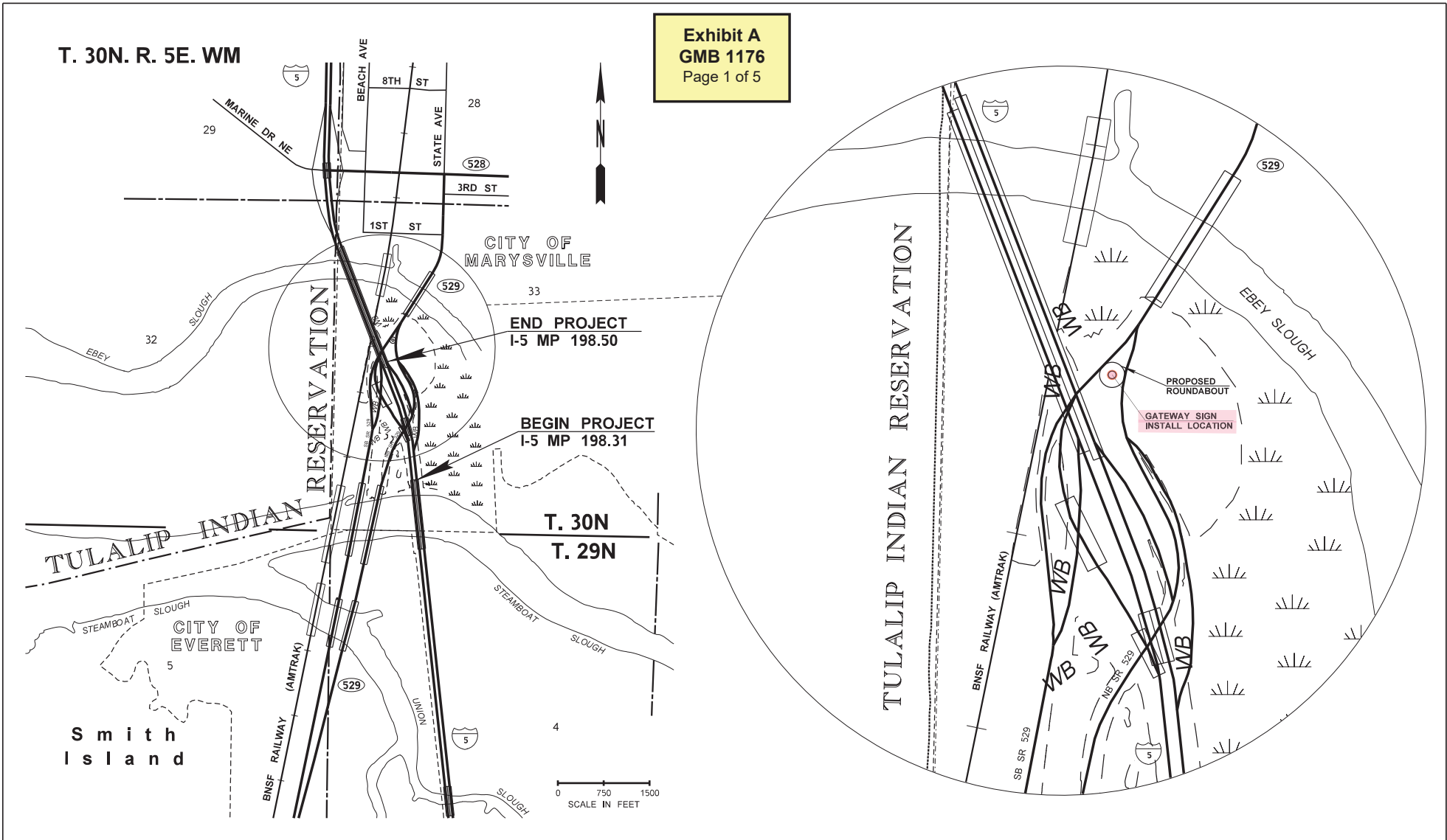
City of Marysville	Washington State Department of Transportation
<u>Sign and Date:</u>	<u>Sign and Date:</u>
Jon Nehring Mayor	Morgan Balogh Assistant Regional Administrator Maintenance, Northwest Region
Approved as to Form City of Marysville	Approved as to Form Washington State Department of Transportation
<u>Sign and Date:</u>	<u>Sign and Date:</u>  10/20/21
Jon Walker City Attorney	Mark Schumock Assistant Attorney General

Exhibit A
GMB 1176
 Page 1 of 5



FILE NAME	H:\XL5468 - I-5 MVD to SR 528 PSL & ICIVicinity Map\XL5468_PS_VM.dgn
TIME	3:16:54 PM
DATE	10/30/2020
PLOTTED BY	KhoG
DESIGNED BY	G.J. KHO
ENTERED BY	G.J. KHO
CHECKED BY	H.T. HUYNH
PROJ. ENGR.	K. NDILE
REGIONAL ADM.	M. COTTEN

REGION NO.	10	STATE	WASH	FED.AID PROJ.NO.	
JOB NUMBER	20A804	CONTRACT NO.	9551	LOCATION NO.	
REVISION		DATE		BY	

P.E. STAMP BOX	DATE
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P.E. STAMP BOX	DATE
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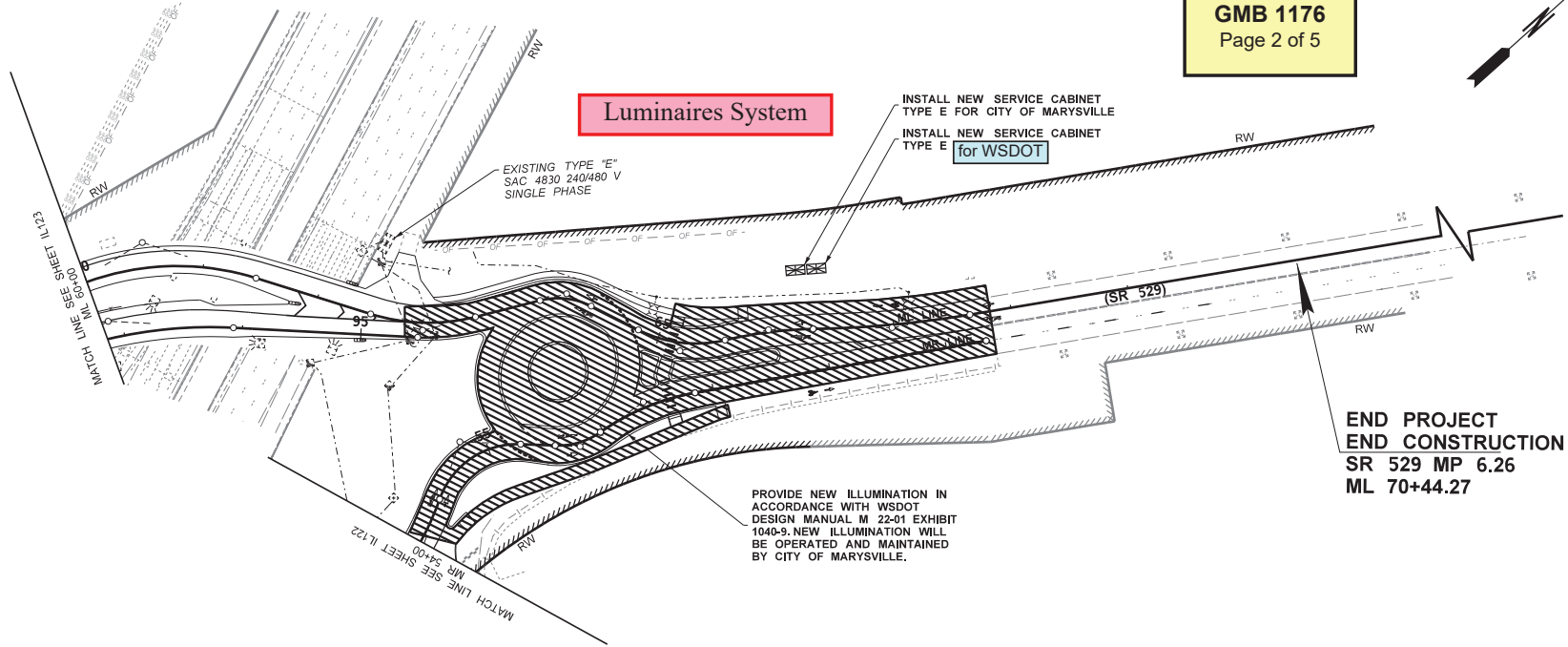


I-5
 NB MARINE VIEW DR TO SR 529
 CORRIDOR & INTERCHANGE IMPROVEMENTS
 VICINITY MAP

Plot 1
PLAN REF. NO
VM1
SHEET
1
OF
1
SHEETS

SECT. 33, T. 30N. R. 5E. W.M.

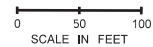
Exhibit A
GMB 1176
 Page 2 of 5



END PROJECT
END CONSTRUCTION
 SR 529 MP 6.26
 ML 70+44.27

PROVIDE NEW ILLUMINATION IN ACCORDANCE WITH WSDOT DESIGN MANUAL M 22-01 EXHIBIT 1040-9. NEW ILLUMINATION WILL BE OPERATED AND MAINTAINED BY CITY OF MARYSVILLE.

LEGEND	
EXISTING	NEW



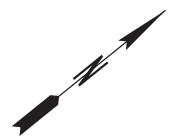
CONCEPTUAL DESIGN
NOT FOR CONSTRUCTION

H-D-PAK-GEN-TR2, 00220-04-ASB

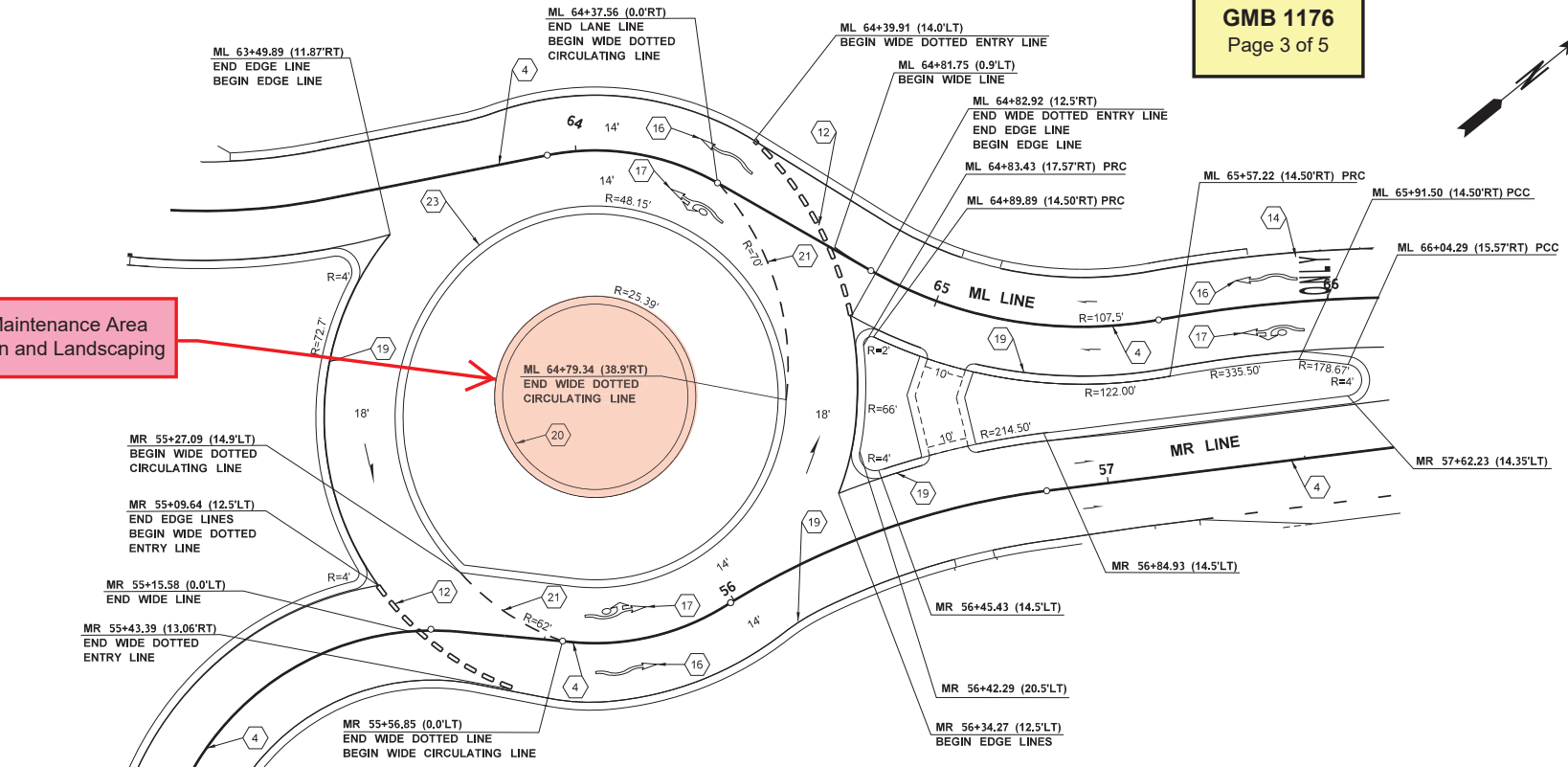
FILE NAME c:\cadd\blg\hntb_rarom\west\0123402\XL225177_PS_IL124.DGN	TIME 11:39:48 AM	DATE 5/18/2021	DESIGNED BY A. GOROVAYA	ENTERED BY L. JOHNSON	CHECKED BY J. PRZYCHODZEN	PROJ. ENGR. K. NDILE	REGIONAL ADM. M. COTTEN	REVISION	DATE	BY	REG. NO. 10	STATE WASH	FED. AID PROJ. NO.	JOB NUMBER 20A804	CONTRACT NO.	LOCATION NO.	P.E. STAMP BOX	DATE	P.E. STAMP BOX	DATE	 Washington State Department of Transportation HNTB	I-5 NB MARINE VIEW DR TO SR 529 CORRIDOR & INTERCHANGE IMPROVEMENTS ILLUMINATION PLAN	PLAN REF. NO. IL124 SHEET OF SHEETS
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SECT. 33, T. 30N. R. 5E. W.M.

Exhibit A
GMB 1176
 Page 3 of 5



Maintenance Area
 Sign and Landscaping



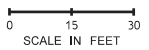
LEGEND	
	EXISTING TRAFFIC BARRIER
	NEW TRAFFIC BARRIER
	NEW WALL
	EXISTING GUARDRAIL
	NEW GUARDRAIL
	NEW LIMITED ACCESS
	EXISTING LIMITED ACCESS
	EXISTING LANE LINE
	EXISTING EDGE LINE
	EXISTING RUMBLE STRIP
	NEW RUMBLE STRIP

LEGEND			
	1 WHITE EDGE LINE		11 YELLOW CROSSHATCH MARKING
	2 YELLOW EDGE LINE		12 WIDE DOTTED ENTRY LINE
	3 WHITE LANE LINE		13 WIDE DOTTED CIRCULATING LINE
	4 WHITE WIDE LANE LINE		14 RUMBLE STRIP
	5 CONCRETE BARRIER		15 ROUNDABOUT TRUCK APRON CEMENT CURB AND GUTTER
	6 STOP LINE		16 ONLY SYMBOL
	7 WIDE DOTTED LANE LINE		17 BIKE SYMBOL ARROW
	8 DOUBLE CENTERLINE YELLOW		18 TRAFFIC ARROW TYPE T
	9 GORE AREA MARKING		19 TRAFFIC ARROW TYPE LTC
			20 ROUNDABOUT CEMENT CURB AND GUTTER
			21 ROUNDABOUT CENTRAL ISLAND CEMENT CONCRETE CURB TYPE 3

WSDOT NORTHWEST REGION
APPROVED CHANNELIZATION PLAN

TRAFFIC ENGINEER - AREA OPERATIONS
 SIGNED _____ DATE _____
 PRINT _____

ENGINEERING MANAGER
 SIGNED _____ DATE _____
 PRINT _____



H-D-PAK-GEN-TR2-JI-00220-04-ASB

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DESIGNED BY	A. ZIEGLER	STATE	WASH
ENTERED BY	L. JOHNSON	JOB NUMBER	XL5468
CHECKED BY	M. FREAS	CONTRACT NO.	XXXXXX
PROJ. ENGR.	D. SIMS	DATE	
REGIONAL ADM.	M. COTTEN	BY	

PRELIMINARY NOT FOR CONSTRUCTION

P.E. STAMP BOX _____ DATE _____

GEOMETRICS APPROVED WITHIN STATE HIGHWAY RIGHT OF WAY ONLY



I-5

NB MARINE VIEW DR TO SR 529
CORRIDOR & INTERCHANGE IMPROVEMENTS

SNOHOMISH COUNTY DECEMBER 2019

CHANNELIZATION PLAN

DRAFT 3

MP 194.47 TO 198.55	PLAN REF NO
MP 197.91 TO 198.39	C124
MP 5.61 TO 6.23	
SHEET 25 OF 27 SHEETS	

ROUNDBABOUT MONUMENT IDENTIFICATION

SCALE: 1/2" = 1'-0"

Exhibit A
GMB 1176
Page 4 of 5



51 University Street | Suite 600
Seattle, WA 98101
206/461-6000
dlrgroup.com

PROJECT
Marysville Civic Center
Marysville, WA

PROJECT NUMBER
73-18138-02

PHASE
Design Intent
12 17 20

All artwork is for design intent only. Artwork should not be used for production. All dimensions and locations are to be field verified.

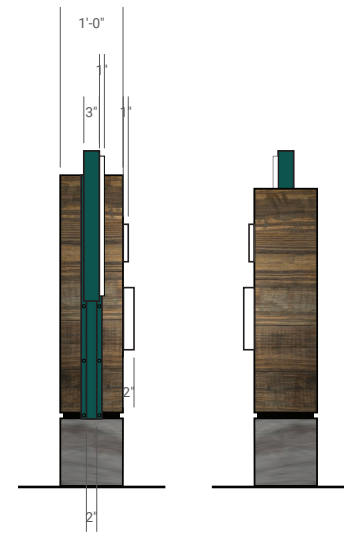
DRAWING NOTES:



PLAN VIEW



ELEVATION VIEW



SIDE VIEW
LEFT PROFILE

SIDE VIEW
RIGHT PROFILE

ROUNABOUT MONUMENT IDENTIFICATION

SCALE: 1/2" = 1'-0"

Exhibit A
GMB 1176
Page 5 of 5



51 University Street | Suite 600
Seattle, WA 98101
206/461-6000
dlrgroup.com

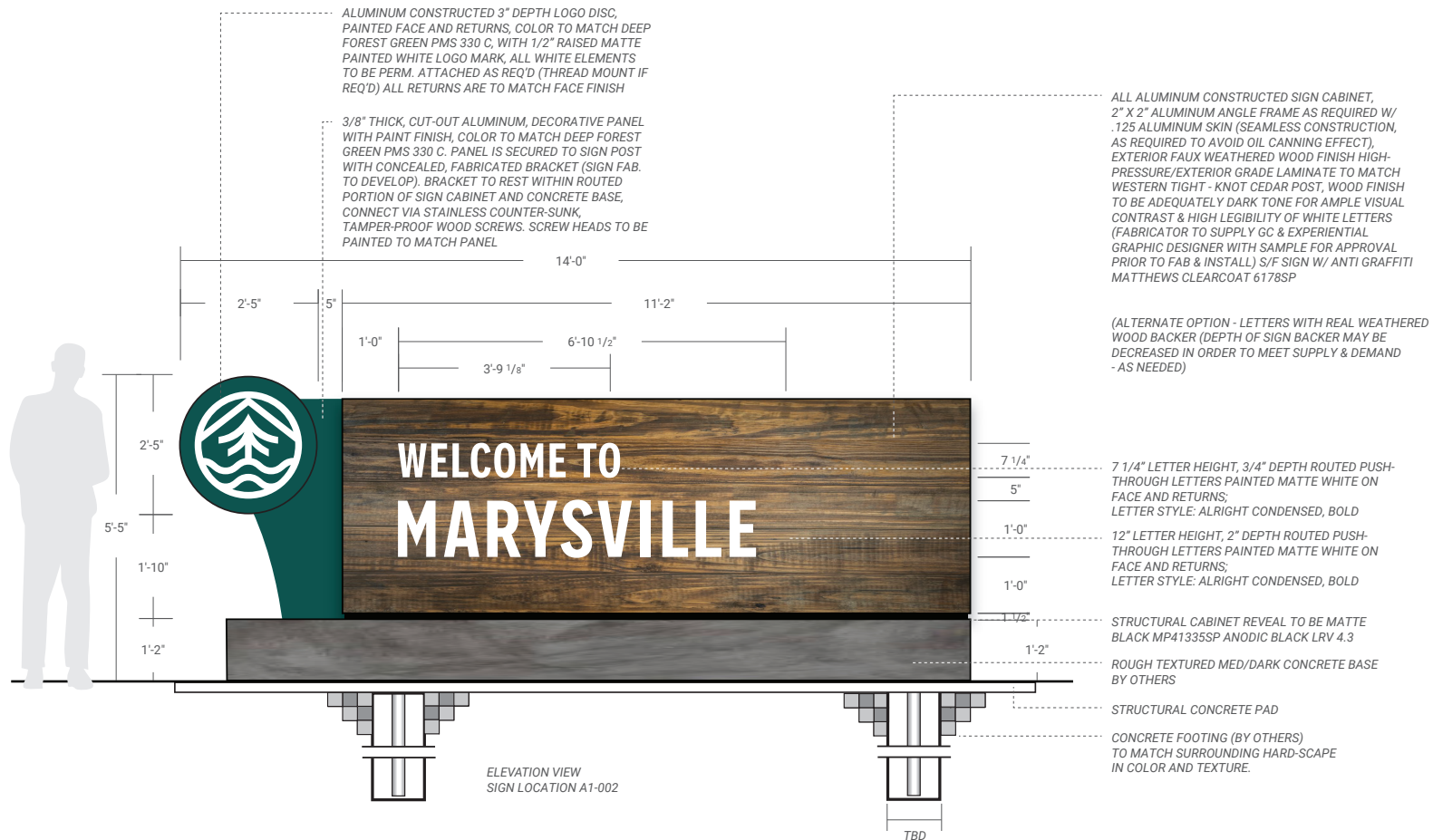
PROJECT
Marysville Civic Center
Marysville, WA

PROJECT NUMBER
73-18138-02

PHASE
Design Intent
12 17 20

All artwork is for design intent only. Artwork should not be used for production. All dimensions and locations are to be field verified.

DRAWING NOTES:



CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE:

AGENDA ITEM:	
Sign Code Review	
PREPARED BY:	DIRECTOR APPROVAL:
Gloria Hirashima, CAO (per discussion with Councilmember James)	
DEPARTMENT:	
City Council	
ATTACHMENTS:	
<ol style="list-style-type: none"> 1. Sign Code, Chapter 22C 2. MRSC – Sign Regulation 3. MRSC – Regulating Non-Commercial Temporary Signs During Election Season 	
BUDGET CODE:	AMOUNT:
SUMMARY:	
<p>Councilman James requested, and the City Council concurred that the sign code be placed on the agenda for discussion. The area of greatest interest to Councilman James is political signage. Political signs are covered under 22C.160.230 Development standards – Temporary and special event signs. Concerns identified are size, length of time allowed for placement of temporary signage, and placement of signage within the right of way. He would like Council to review other municipal code examples and have a legal update on restrictions for regulating political signage or the category of “temporary and special event signs”.</p>	

RECOMMENDED MOTION:

Chapter 22C.160 SIGNS

Sections:

- 22C.160.010 Purpose.**
- 22C.160.020 Authority.**
- 22C.160.030 Permits required.**
- 22C.160.040 Application requirements and fee schedule.**
- 22C.160.050 Inspections.**
- 22C.160.060 Construction standards.**
- 22C.160.070 Prohibitions.**
- 22C.160.080 Exemptions.**
- 22C.160.090 On-premises requirement.**
- 22C.160.100 Maintenance.**
- 22C.160.110 Abandoned signs.**
- 22C.160.120 Subarea master plan and special overlay districts.**
- 22C.160.130 Illumination.**
- 22C.160.140 Measurement standards.**
- 22C.160.150 Development standards – Residential zones.**
- 22C.160.160 Development standards – Wall signs.**
- 22C.160.170 Development standards – Freestanding signs.**
- 22C.160.180 Development standards – Electronic message, animated and changeable copy signs.**
- 22C.160.190 Development standards – Instructional signs.**

22C.160.200 Development standards – Window signs.

22C.160.210 Development standards – Blade/bracket signs.

22C.160.220 Development standards – Gas stations, convenience stores, car washes and similar uses.

22C.160.230 Development standards – Temporary and special event signs.

22C.160.240 Nonconforming signs.

22C.160.250 Amortization for billboard signs.

22C.160.260 Bonus allowance for outstanding design.

22C.160.270 Variances.

22C.160.280 Substitution.

22C.160.010 Purpose. 

The purpose of this chapter is to provide for the reasonable display of signs necessary for public service or the conduct of business. The regulations enacted herein are necessary to protect the safety and welfare of the public and to maintain an attractive appearance in the community. This chapter authorizes and regulates the use of signs visible from a public right-of-way and/or adjacent property to:

- (1) Provide a reasonable balance between the right of an individual to identify a business and the right of the public to be protected against the unrestricted proliferation of signs; and
- (2) Support the economic well-being of businesses by allowing businesses to identify their premises and advertise products and services; and
- (3) Provide minimum standards to safeguard life, health, property and the general welfare by regulating and controlling the design, quality of materials, construction, location, electrification and maintenance of all signs and sign structures; and
- (4) Ensure that signs are compatible with adjacent land uses; and
- (5) Protect the public from hazardous conditions resulting from signs that are structurally unsafe, obscure visions of motorists, distract motorists, or interfere with traffic signs and signals; and
- (6) Minimize overhead clutter for drivers and pedestrians; and

(7) Provide for types and sizes of signs appropriate to the land uses and zoning districts of the city; and

(8) Encourage well-designed signs that are compatible both with surrounding land uses and the buildings to which they are appurtenant; and

(9) Provide for the orderly and reasonable elimination of existing signs that are not in conformance with this chapter to protect the public health, safety, and welfare; and

(10) Provide a reasonable amortization period for businesses which have made a substantial investment in off-premises signs (billboards); and

(11) Implement the goals and policies of the Marysville comprehensive plan; and

(12) Protect property values by encouraging signs that are appropriate in both scale and design to surrounding buildings and landscape, and by discouraging a needless proliferation of the number of signs. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.020 Authority.

(1) Administration. The community development director will administer these sign standards as set forth in Chapter [22G.010](#) MMC, Land Use Application Procedures. The director may implement procedures, forms, and written policies for administering the provisions of this chapter.

(2) Enforcement. This chapter will be enforced by the code enforcement officer.

(3) Violations. Violations of this chapter are civil infractions enforced under MMC Title [4](#). (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.030 Permits required.

It shall be unlawful to erect or display a sign in the city without a sign permit issued by the community development department, except for those exempted in MMC [22C.160.080](#). (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.040 Application requirements and fee schedule.

(1) Applications for sign permits shall be made to the building official upon forms provided by the community development department. Such application shall require:

(a) Name, address, telephone number and e-mail address of the applicant.

(b) Name, address, telephone number and e-mail address of the sign owner.

(c) Tax parcel number or correct address where the proposed sign or signs will be located.

- (d) A scaled drawing of the proposed sign or sign revision, including size, height, copy, structural footing details, method of attachment and illumination.
- (e) A scaled site plan, indicating the location of the sign relative to property lines, rights-of-way, streets, sidewalks, and other buildings or structures on the premises.
- (f) The number, size, type and location of all existing signs on the same building, lot or premises.

(2) Fee Schedule. Fees for sign permits are as provided by MMC [16.04.045](#), Table 1-A. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.050 Inspections.

(1) Inspections are required for all signs requiring a permit. The building division shall be contacted for inspections at the following points of the project:

- (a) Prior to pouring footings for freestanding signs. The applicant will be required to provide enough field information for the inspector to determine the proposed sign complies with applicable setback provisions.
- (b) Foundation, anchorage, attachments and other structural support of the sign, sign structure and awning.
- (c) Electrical connections of the sign, sign lighting or awning lighting. No person may make connections of a sign, sign lighting or awning lighting to a power source until all electrical components and connections have been approved.
- (d) Final sign installation to determine compliance with the approved plans.

(2) Special inspections may be required for complex signs as specified by the licensed design professional or the building official. Notice will be given to the applicant as part of the permit review process when a special inspection is required. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.060 Construction standards.

The construction, erection, safety and maintenance of all signs shall comply with MMC Title [16](#), and the following:

- (1) Signs shall be structurally sound and located so as to pose no reasonable threat to pedestrian or vehicular traffic.
- (2) All permanent freestanding signs shall have self-supporting structures erected on, or permanently attached to, concrete foundations.

(3) Signs should not be in locations that obscure architectural features such as pilasters, arches, windows, cornices, etc.

(4) Signs should not be in locations that interfere with safe vehicular and pedestrian circulation or public safety signals and signs.

(5) No signs shall be erected, constructed or maintained so as to obstruct any fire escape, required exit, window, or door opening used as a means of egress. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.070 Prohibitions.

The following signs are prohibited in the city and are subject to the specific prohibitions, requirements, and exceptions set forth below for each type of sign:

(1) Billboards. Billboards shall be removed subject to the amortization schedule outlined in MMC [22C.160.250](#).

(2) Animated signs. No sign shall be animated, revolve or rotate either mechanically or by illumination, except for the movement of the hands of a clock, permitted electronic message signs, and barber poles.

(3) Roof signs.

(4) Hazardous signs. A sign is hazardous if it creates a safety hazard for pedestrians or motorists, as determined by the police chief or city engineer.

(5) Signs located in or on public right-of-way. No signs shall be located upon or projecting over public streets, sidewalks, or rights-of-way except as provided for projecting wall signs in MMC [22C.160.160](#)(9), blade/bracket signs in MMC [22C.160.210](#) and temporary and special event signs in MMC [22C.160.230](#).

(6) Temporary and special event signs. Temporary and special event signs not meeting the requirements of MMC [22C.160.230](#) are prohibited. This prohibition includes, but is not limited to, portable readerboards, signs on vehicles or trailers, banners and sandwich or A-boards; provided, that sandwich or A-board signs may in certain circumstances be specifically allowed as set forth in this chapter.

(7) Signs on utility poles and trees. Signs on utility, street light and traffic control standards or poles and trees are prohibited, except for those of the utility or government.

(8) Signs not meeting the requirements of this chapter or that are legally nonconforming. The following signs are unlawful and prohibited:

(a) Signs which were lawful under prior sign codes, but which are not lawful under this chapter.

(b) Signs that do not comply with the conditions of their permits.

(c) Signs erected, altered or relocated without a permit and not in compliance with this chapter.

(d) Signs which were lawful under prior sign codes, but which have been altered or relocated so that the sign is not in compliance with this chapter.

(e) Signs that identify and advertise activities, products, businesses, or services which have been discontinued, terminated or closed for more than 60 days on the premises upon which the signs are located.

(9) Streamers, pennants, and banners. Displays of banners, festoons, flags, posters, pennants, ribbons, streamers, strings of lights, chasing strobe or scintillating lights, flares, balloons, bubble machines and similar devices are prohibited when the same are visible from any off-site location, including but not limited to any public right-of-way, except as provided in MMC [22C.160.230](#). Where such signs or devices are not visible from off site, this prohibition does not apply.

(10) Traffic-like signs. Signs which by reason of their size, location, movement, content, coloring or manner of illumination may be confused with a traffic control sign, signal, or device, or the light of an emergency vehicle, or which obstruct the visibility of any traffic or street sign or signal, are prohibited.

(11) Obscene signs. Signs which bear or contain statements, words or pictures which are obscene under the prevailing statutes or applicable state and federal court decisions are prohibited. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.080 Exemptions.

The following signs are exempted from obtaining a sign permit, but must comply with all other requirements of this chapter and with the specific requirements set forth below for each type of sign:

(1) A change in the face of the sign or advertising copy of an existing, legally permitted, sign.

(2) Temporary and special event signs meeting the requirements of MMC [22C.160.230](#).

(3) On-premises and portable commercial or real estate signs meeting the requirements of MMC [22C.160.230](#)(5) and (6).

(4) Political signs meeting the requirements of MMC [22C.160.230](#)(7).

- (5) Nonelectric signs not exceeding four square feet per face, which are limited in content to the name of occupant and address of the premises in a residential zone.
- (6) Instructional signs, not exceeding six square feet per sign; provided, that foundation, anchorage, attachments and other structural support of the sign and electrical connection require construction permits.
- (7) Menu signs. Foundation, anchorage, attachments and other structural support of the sign and electrical connection require construction permits.
- (8) Seasonal decorations. Reasonable seasonal decorations within an appropriate holiday season or during a festival are exempt from this section as long as such displays are removed promptly at the end of the holiday season or festival.
- (9) Sculptures, fountains, benches, lighting, mosaics, murals, landscaping and other street furniture and design features, which do not incorporate advertising or identification.
- (10) Signs not visible from public way. Exterior and interior signs or displays not intended to be visible from streets or public ways, signs in the interior of a building more than three feet from the closest window and not facing a window, window displays and point of purchase advertising displays such as vending machines.
- (11) Traffic or other municipal signs, signs required by law or emergency services, railroad crossing signs, legal notices, and any temporary signs specifically authorized by the city council or authorized under policies and procedures adopted by the city council.
- (12) Signs of public utility companies indicating danger or which serve as an aid to public safety or which show the location of underground facilities or of public telephones.
- (13) Memorial signs or tablets, names of buildings, stained glass windows and dates of erection when cut into the surface of the facade of the building or when projecting not more than two inches.
- (14) Incidental signs, including, but not limited to, "no trespassing," "no dumping," "no parking," "private," signs identifying essential public needs (i.e., restrooms, entrance, exit, telephone, etc.) and other information warning signs, which shall not exceed three square feet in surface area.
- (15) Flush-mounted wall signs which are used to identify the name and address of the occupant for each dwelling, provided the sign does not exceed two square feet in sign area.
- (16) Gateway entrance signs. Gateway entrance signs that comply with the city of Marysville gateway master plan. Foundation, anchorage, attachments and other

structure support of the sign and electrical connection require construction permits. (Ord. 3054 § 16, 2017; Ord. 2852 § 10 (Exh. A), 2011).

22C.160.090 On-premises requirement.

All signs shall be located on-premises; provided, that temporary off-premises signs shall be allowed subject to the provisions set forth in MMC [22C.160.230](#). In addition, property owners may apply for an off-premises freestanding sign with a contiguous property abutting a public street, subject to the following criteria:

(1) The allowable off-premises freestanding sign area shall be determined by measuring the street frontage of the property abutting the public street, as provided in MMC [22C.160.140](#)(5).

(2) Off-premises freestanding signage shall comply with all applicable development standards set forth in this chapter.

(3) Applicants may apply for a bonus allowance, subject to the criteria set forth in MMC [22C.160.260](#). (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.100 Maintenance.

Signs shall be maintained in the same condition as when the sign was installed. Normal wear and tear of aged signs shall be repaired when they detract from the visible quality of the sign, as determined by the community development director. When signs are repaired, they must do so in a manner (paint colors shall match, etc.) that is consistent with the approved sign permit. When signs are removed, the wall behind the sign shall be repaired and painted to match the rest of the building wall. The premises surrounding a freestanding sign shall be free of litter, and any landscaped area shall be maintained.

Those signs found to be deteriorated or unsafe shall be repaired or removed by the owner within 10 days after receiving notice from the community development director or designee. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.110 Abandoned signs.

Abandoned signs shall be removed by the property owner or lessee within 60 days after the business or service advertised by the sign is no longer conducted on the premises. If the property owner or lessee fails to remove it, the community development director, or designee, shall give the owner 10 days' written notice to remove it. Upon failure to comply with this notice, the city of Marysville may remove the sign at the cost of the owner of the premises. The foundations and posts of a sign, with all advertising copy removed, may remain on the premises for up to three years with the owner's written consent, on the condition that the same must be continuously maintained pursuant to MMC [22C.160.100](#). (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.120 Subarea master plan and special overlay districts.

In general, all signs are subject to sign regulations outlined in this chapter. When the regulations of a subarea master plan or special overlay district conflict with this chapter,

unless specifically indicated otherwise, the regulations of the subarea master plan or special overlay district supersede the regulations of this chapter. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.130 Illumination.

The following standards apply to all illuminated signs:

- (1) Sign illumination shall not interfere with the use and enjoyment of adjacent properties, create a public nuisance, or create public safety hazards. Exterior light sources shall be shielded from view and directed to illuminate only the sign face.
- (2) No sign shall have blinking, flashing, moving or fluttering lights or other illuminating devices that have a changing light intensity, brightness or color.
- (3) Illuminated signs shall not create a hazardous glare for pedestrians or vehicles either in a public street or on any private premises and shall not project towards the sky.
- (4) The light from an illuminated sign shall not be of an intensity or brightness or directed in a manner that will create a negative impact on residential properties in direct line of sight to the sign.
- (5) Colored light shall not be used at a location or in a manner so as to be confused or construed as a traffic control device.
- (6) Reflective-type bulbs and incandescent lamps that exceed 15 watts shall not be used on the exterior surface of signs so that the face of the bulb or lamp is exposed to a public right-of-way or adjacent property.
- (7) Light sources shall utilize energy efficient fixtures to the greatest extent possible.
- (8) Each illuminated sign shall be subject to a 30-day review period, during which time the community development director or designee may determine that a reduction in illumination is necessary due to negative impacts on surrounding property or the community in general. In addition, and at any time, the community development director or designee may order the dimming of any illumination found to be excessively bright. The community development director's determination will be made without regard to the message content of the sign. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.140 Measurement standards.

(1) Determining Sign Area and Dimensions.

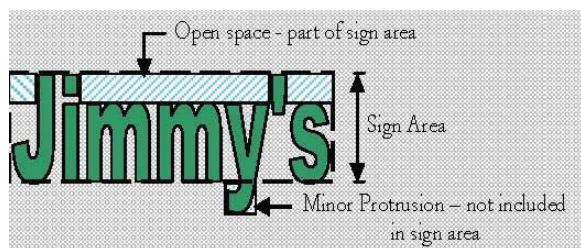
- (a) For a wall sign which is framed, outlined, painted or otherwise prepared and intended solely to provide a background for a sign display, the area and dimensions shall include the entire portion within such background or frame.

(b) For a wall sign comprised of individual letters, figures or elements on a wall or similar surface of the building or structure, the area and dimensions of the sign shall encompass a regular geometric shape (rectangle, circle, trapezoid, triangle, etc.), or a combination of regular geometric shapes, which form, or approximate, the perimeter of all elements in the display, the frame, and any applied background that is not a part of the architecture of the building. When separate elements are organized to form a single sign, but are separated by open space, the sign area and dimensions shall be calculated by determining the geometric form, or combination of forms, which comprises all of the display areas, including the space between different elements. Minor appendages to a particular regular shape, as determined by the community development director, shall not be included in the total area of a sign.

Figure 1: Wall Sign Area – Examples of Area Calculations



Measuring the examples using multiple geometric shapes



This illustrates the areas to be included within the calculation of a sign area.

(c) For a freestanding sign, the sign area shall include the frame, if any, but shall not include:

- (i) A pole or other structural support unless such pole or structural support is internally illuminated or otherwise designed so as to constitute a display device, or a part of a display device.
- (ii) Architectural features that are either part of the building or part of a freestanding structure, and not an integral part of the sign, such as landscaping and building or structural forms complementing the site in general.

Figure 2: Freestanding Sign Area – Examples of Area Calculations



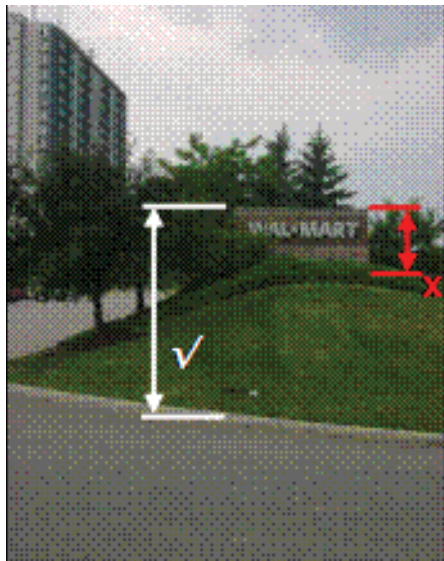
The dashed line indicates the sign area

(d) When two identical sign faces are placed back to back so that both faces cannot be viewed from any point at the same time and are part of the same sign structure, the sign area shall be computed as the measurement of one of the two faces.

(2) Determining Sign Height.

(a) The height of a freestanding sign shall be measured from the base of the sign or supportive structure at its point of attachment to the ground to the highest point of the sign. A freestanding sign on a manmade base, including a graded earth mound, shall be measured from the grade of the nearest pavement or top of any pavement curb.

(b) Clearance for freestanding and projecting signs shall be measured as the smallest vertical distance between finished grade and the lowest point of the sign, including any framework or other embellishments.



The height of a sign is measured from the grade of the street level where the sign is viewed; not from the top of the mound

(3) Determining Building Frontages and Frontage Lengths.

(a) Building Unit. The building unit is equivalent to the tenant space. The primary frontage of the tenant space on the first floor shall be the basis for determining the permissible sign area for wall signs.

(b) Primary and Secondary Frontage.

(i) Primary Frontage. Primary frontage shall be considered the portion of any frontage containing the primary public entrance(s) to the building or building units.

(ii) Secondary Frontage. Secondary frontage shall include those frontages containing secondary public entrances to the building or building units and all building walls facing a public street, primary parking area, or drive aisle that are not designated as the primary building frontage by subsection (3)(b)(i) of this section.

(4) Building Frontage.

(a) The primary or secondary frontage shall be all walls parallel, or nearly parallel, to such frontage, excluding any such wall determined by the community development director to be clearly unrelated to the frontage criteria.

(b) The frontage for a building unit shall be measured from the centerline of the party walls defining the building unit.

(5) Determining Street Frontage.

(a) Street frontage shall be determined by measuring the lineal feet of property abutting the public street from which a property obtains primary access.

(b) For developments located along more than one public street, the street frontage shall be determined by measuring the lineal feet of property abutting all public streets.

(c) Alley frontage shall not be included in determining street frontage.

(d) Properties abutting Interstate 5, and not abutting a public street, shall have the street frontage determined by measuring the lineal feet of property abutting Interstate 5. (Ord. 3093 § 2, 2018; Ord. 2898 § 3, 2012; Ord. 2852 § 10 (Exh. A), 2011).

22C.160.150 Development standards – Residential zones. 

In addition to all other provisions of this chapter, the following development standards apply in residential zones:

(1) The total combined area of all nonexempt signs on any lot in a residential zone shall not exceed nine square feet, except as provided in subsections (7) through (12) of this section.

(2) All dwelling units in residential districts shall display house numbers readable from the street.

(3) Illumination from or upon signs shall be shaded, shielded, directed or reduced so that the light intensity or brightness does not affect the enjoyment of residential property in the vicinity in any substantial way.

(4) Freestanding pole, or pylon, signs are prohibited.

(5) Roof signs are prohibited.

(6) No sign shall be located closer than 10 feet to an internal property line unless attached to a fence. Signs attached to fences shall not extend higher than the fence and shall not create sight distance obstruction or any other safety hazard.

(7) Each entrance to a subdivision or multifamily development may have a monument sign up to 32 square feet in area, per face, or two single-faced signs of not more than 16 square feet each. These signs shall be located outside the public right-of-way so as not to create a visual obstruction for motorists or pedestrians. The height of such signs shall not exceed five feet.

(8) Existing recreation/cultural land uses (i.e., park, community center, library, church, etc.) and education services (i.e., public and private schools), not reviewed through the conditional use provisions outlined in subsection (10) of this section, may have one monument sign per street frontage up to 32 square feet in area, per face. The height of such signs shall not exceed five feet and shall comply with the development standards outlined in MMC [22C.160.170](#). In addition, a maximum of 32 square feet of permanent wall signage shall be allowed on the primary and secondary building frontage(s). Wall signs shall comply with the development standards outlined in MMC [22C.160.160](#).

(9) Home occupation, day care and adult family home signs shall not exceed three square feet and shall be wall signs, monument signs or mounted to a fence. Signs mounted to a fence shall comply with the provisions outlined in subsection (6) of this section.

(10) Signs for conditional uses permitted in residential zones shall be approved as part of the applicable conditional use permit and shall not be otherwise restricted by the provisions of this section.

(11) Temporary sale signs (garage sale, estate sale, etc.) may be displayed no more than three days prior to the event and shall be removed 24 hours after the event is completed. There shall be no more than two such events advertised for any residence per year.

(12) Real estate for sale or for rent signs are permitted pursuant to MMC [22C.160.230](#)(5) and (6). (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.160 Development standards – Wall signs.

(1) The basic allowance for wall signs shall be limited to one and one-half square feet of sign area for each lineal foot of primary building frontage for illuminated signs, or two square feet of sign area for each lineal foot of primary building frontage for nonilluminated signs.

(2) Each tenant is allowed a minimum sign area of 32 square feet.

(3) Each tenant may have multiple wall signs placed on the primary or secondary building frontage(s), so long as the total wall signage does not exceed the allowances outlined in subsection (1) of this section.

(4) The community development director may allow wall signage to be placed on wall(s) which do not qualify as primary or secondary frontages, subject to the following criteria:

(a) It must be demonstrated that the wall signage would be visible from a public right-of-way;

(b) The wall signage must be comprised of individual letters;

(c) The letter and logo height shall not exceed 24 inches;

(d) Signs shall be nonilluminated;

(e) The wall signage shall comply with the design standards outlined in subsections (5) through (8) of this section;

(f) In multi-use complexes, said signs shall be mounted so that each tenant's wall sign will be located at the same level (height above grade) as other tenants' signs;

(g) The total wall signage for all frontage(s) shall not exceed the allowances outlined in subsection (1) of this section.

(5) The wall signage shall not exceed two-thirds of the overall frontage for the building or tenant(s) frontage, as applicable.

(6) The wall signage shall not encroach within three feet from the edge of the building or tenant(s) frontage, as applicable.

(7) Wall signs shall not extend above the building parapet, soffit, eave line, or roof of the building.

(8) The color, shape, material, lettering and other architectural details shall be harmonious with the character of the primary structure. No angle irons, guy wires, or braces shall be visible except those that are an integral part of the overall design.

(9) The following additional wall signs may be permitted:

(a) Projecting signs are permitted, in addition to the allowances for wall signs, when designed and placed for the purpose of identifying the business(es) to pedestrians walking along the same side of the street as the business they seek or under a continuous rain canopy projecting from the building, subject to the following criteria:

(i) Clearance: Shall clear sidewalk by eight feet.

(ii) Projections: Shall not project more than five feet from the building facade, unless the sign is a part of a permanent marquee or awning over the sidewalk. Vertically oriented signs shall not project more than three feet from the building facade. In no case shall a projecting sign be placed within two feet of the curb line.



(iii) Size: Shall not exceed an area of two square feet per each 10 lineal feet of applicable primary building frontage.

(iv) Height: Shall not extend above the building parapet, soffit, eave line, or the roof of the building, except for theaters.

(v) Spacing: 20 feet minimum separation.

(vi) Design: The color, shape, material, lettering and other architectural details shall be harmonious with the character of the primary structure. No angle irons, guy wires, or braces shall be visible except those that are an integral part of the overall design.

(b) Building Directory. In addition to the wall signs otherwise permitted by these regulations, an additional sign may be permitted up to a maximum of 10 square feet for the purpose of identifying upper floor tenants or first floor tenants that do not have outside building frontage. (Ord. 2898 § 4, 2012; Ord. 2852 § 10 (Exh. A), 2011).

22C.160.170 Development standards – Freestanding signs. [SHARE](#)

(1) The basic allowance for freestanding signs shall be limited to one square foot of sign area for each lineal foot of street frontage not to exceed 200 square feet of sign area



per street frontage and 75 square feet per sign face.

(2) The maximum height of freestanding signs is outlined in Table 1; provided, that monument signs shall not exceed 12 feet in height. Additionally, when the regulations of a subarea, master plan or special overlay district conflict, unless specifically indicated otherwise, the regulations of the subarea, master plan or special overlay district shall supersede the height requirements outlined in Table 1.

Table 1: Freestanding Signs – Maximum Height

Zoning District									
NB	CB	GC	DC	MU	BP	LI	GI	REC	P/I
4 feet	25 feet	25 feet	15 feet	12 feet	25 feet	25 feet	25 feet	4 feet	15 feet

(3) No portion of a freestanding sign shall be in, or project over, a public right-of-way, and the minimum setback shall be five feet, subject to sight distance review at intersections and driveways.

(4) Single-occupancy complexes are allowed one freestanding sign per street frontage.

(5) Multi-occupancy complexes are allowed one freestanding sign per access driveway for the complex. However, multi-occupancy complexes with only one access driveway shall be allowed one additional freestanding sign, as long as the freestanding sign advertises a different business or businesses located on site and can be spaced at least 150 feet apart.

(6) All pole, or pylon, sign supports shall be enclosed or concealed in accordance with the design criteria outlined in subsection (10) of this section.



(7) Pole, or pylon, signs are prohibited in the NB, MU and REC zones.

(8) Pole, or pylon, signs are prohibited in the commercial and industrial zones located along the 88th Street NE, 116th Street NE, 156th/152nd Street NE and 160th Street NE corridors.

(9) Pole, or pylon, signs are prohibited on CB zoned properties located adjacent to 64th Street NE (SR 528) and 84th Street NE from approximately 83rd Avenue NE to SR 9.

(10) The base of a freestanding sign and all pole or pylon sign supports shall be constructed of landscape materials, such as brick, stucco, stonework, textured wood, tile, textured concrete, or other quality materials as approved by the director, and shall be harmonious with the character of the primary structure. This limitation does not apply to structural elements that are an integral part of the overall design such as decorative metal or wood.

(11) The color, shape, material, lettering and other architectural details of freestanding signs shall be harmonious with the character of the primary structure.

(12) No angle irons, guy wires or braces shall be visible except those that are an integral part of the overall design.

(13) One square foot of landscaping is required per one square foot of sign face. Landscaping shall include a decorative combination of ground cover and shrubs to provide seasonal interest in the area surrounding the sign. Landscaping shall be well maintained at all times of the year. The community development director may reduce the landscaping requirement where the signage incorporates stone, brick, or other decorative materials. (Ord. 3093 § 3, 2018; Ord. 2983 § 2, 2015; Ord. 2852 § 10 (Exh. A), 2011).

22C.160.180 Development standards – Electronic message, animated and changeable copy signs.



(1) Changeable copy by nonelectronic means may be utilized on any permitted nontemporary sign.

(2) Animated signs are prohibited.

(3) One electronic message or changeable copy sign is permitted per street frontage for single-occupancy complexes. Multi-occupancy complexes with only one access driveway shall be allowed one additional electronic message or changeable copy sign, as long as the signs are spaced at least 150 feet apart.



(4) Electronic message signs are permitted; provided, that the copy does not change more than once every 20 seconds.

(5) Electronic message and changeable copy signs shall not exceed 30 percent of the sign area.

(6) All electronic message and changeable copy signs shall be constructed as an integral part of a permanent sign constructed on site. "Integral" shall be considered to mean that the electronic message or changeable copy is incorporated into the framework and architectural design of the permanent sign.

(7) All electronic message signs are required to have automatic dimming capability that adjusts the brightness to the ambient light at all times of the day and night. (Ord. 2983 § 3, 2015; Ord. 2852 § 10 (Exh. A), 2011).

22C.160.190 Development standards – Instructional signs. [SHARE](#)

(1) Instructional or directional signs shall be permitted in addition to all other signs, when they are of such size and location as to satisfy the intended instructional purpose and, based on their size, location, and intended purpose, will not constitute additional advertising.

(2) Instructional signs shall not exceed six square feet per sign and may include the name of the business and logos.

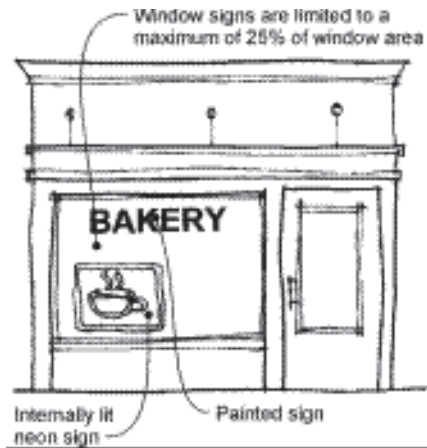


(Ord. 2852 § 10 (Exh. A), 2011).

22C.160.200 Development standards – Window signs. [SHARE](#)

(1) Permanent window signs shall not exceed 25 percent of the area of a window, and the total area of all window signs, including both permanent and temporary, shall not exceed 50 percent of the window area.

(2) Window signs constructed of neon, stained glass, gold leaf, cut vinyl, and etched glass are allowed. Painted signs shall display the highest level of quality and permanence, as determined by the community development director.



(Ord. 2852 § 10 (Exh. A), 2011).

22C.160.210 Development standards – Blade/bracket signs. [SHARE](#)

Blade/bracket signs are allowed for commercial uses, subject to the following criteria:

(1) Projection. Blade signs may project up to three feet. Bracket signs shall have one foot minimum between the sign and the outer edge of the marquee, awning, or canopy and between the sign and the building facade.



(2) Clearance. Blade/bracket signs shall maintain a minimum clearance of eight feet between the walkway and the bottom of the sign.

(3) Dimensions. Blade signs shall not exceed six square feet in area. Bracket signs shall not exceed two feet in height.

(4) Mounting. Blade signs must avoid covering or modifying windows or other architectural features.

(5) Spacing. There shall be 20 feet minimum separation between blade/bracket signs.

(6) Design. The color, shape, material, lettering and other architectural details shall be harmonious with the character of the primary structure. No angle irons, guy wires or

braces shall be visible, except those that are an integral part of the overall design. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.220 Development standards – Gas stations, convenience stores, car washes and similar uses. 

(1) Signage shall be an integral design element of a project and compatible with the exterior architecture with regard to location, scale, color and lettering.

(2) Sign colors and materials shall match those of the building or the “corporate colors.” Opaque or muted sign backgrounds with cabinet-type signs are encouraged.

(3) No commercial signage shall occupy the pump island area. All instructional signs shall be architecturally integrated.

(4) Gasoline price signs shall be architecturally integrated with other signs or structures. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.230 Development standards – Temporary and special event signs.



(1) Construction Signs. Construction signs, which identify the architects, engineers, contractors or other individuals or firms involved with the construction of a building and announce the character of the building or the purpose for which the building is intended, are permitted subject to the following criteria:

(a) Such signs may be displayed only after a building permit is obtained and during the period of construction on the construction site.

(b) Only one sign is permitted per street frontage.

(c) No construction sign shall exceed 32 square feet per face.

(d) No construction sign shall exceed 12 feet in height.

(e) Construction signs shall be set back a minimum of 10 feet from an interior property line.

(f) Construction signs shall be removed by the date of first occupancy of the premises or upon expiration of the building permit, whichever first occurs.

(2) Grand Opening Displays. Temporary signs, posters, banners, strings of lights, clusters of flags, balloons, searchlights and beacons are permitted for a period not to exceed 60 days per calendar year to announce the opening of a completely new enterprise or the opening of an enterprise under new ownership. All such signs and materials shall be located on the premises being advertised and shall be completely removed immediately upon expiration of said 60-day period.

(3) Special Sales and Events. Temporary signs, posters, banners, strings of lights, clusters of flags, balloons, searchlights and beacons are permitted for the limited purpose of announcing a retail sale or special event in business or commercial zones, but not on a routine basis. All such advertising material shall be located on the premises being advertised and shall be removed immediately upon expiration of said special sale or event.

(4) Quitting Business Sales. Temporary signs, posters and banners are permitted for a period of 90 continuous days for the purpose of advertising quitting business sales, liquidation sales, or other events of a similar nature, which are authorized pursuant to Chapter [5.52](#) MMC, Closing-Out and Special Sales. All such signs shall be located on the premises being advertised and shall be removed immediately upon expiration of the 90-day period or conclusion of the sale, whichever first occurs.

(5) On-Premises Commercial or Real Estate Signs. All exterior real estate signs must be of a durable material. Only the following real estate signs are permitted:

(a) Residential for sale or rent signs. Signs advertising residential property for sale or rent shall be limited to one single-faced or double-faced sign per street frontage. Such signs shall not exceed four square feet per face and must be placed wholly on the subject property. Such signs may remain up for one year or until the property is sold or rented, whichever first occurs. A sold sign may remain up for 10 days after the occupancy of the residential property.

(b) Commercial or industrial for sale or for rent signs. Signs advertising commercial or industrial property for sale or rent shall be limited to one single-faced or double-faced sign per street frontage. Signs may be displayed while the property is actually for sale or rent. The signs shall not exceed 32 square feet per face. If freestanding, the signs shall not exceed 12 feet in height and shall be located a minimum of 10 feet from any abutting interior property line and wholly on the property for sale or rent.

(c) Subdivision signs. Signs advertising residential subdivisions shall be limited to one single-faced or double-faced sign per street frontage. Such signs shall not exceed 32 square feet per face and shall not exceed 12 feet in height. They shall be set back a minimum of 10 feet from any abutting interior property line and shall be wholly on the property being subdivided and sold.

(6) Portable Commercial or Real Estate Signs. Temporary signs advertising business locations or the sale or lease of commercial or residential premises are permitted only as follows:

(a) Number. The number of temporary portable commercial, real estate, and construction signs allowed shall be as follows; provided, that nothing herein shall be construed as authorizing the display of signs otherwise prohibited under applicable provisions of this code:

(i) For any business or real estate unit located in the NB, CB, GC, DC, MU, BP, LI, GI, REC, P/I, WR-MU or WR-CB zoning districts, no more than one temporary portable commercial or real estate sign shall be allowed for each business location or real estate unit offered for sale or lease; provided, that a maximum of one temporary portable sign shall be allowed for any multi-unit complex notwithstanding the number of rental or dwelling units therein currently available for sale or lease, subject to the following location criteria:

(A) Location. Temporary portable commercial or real estate signs shall be located within 12 feet of the applicable building entrance and maintain at least eight feet of horizontal clearance on the sidewalk for pedestrian movement.

(ii) For any business or real estate unit located in the R-4.5, R-6.5, R-8, R-12, R-18, R-28, WR-R-4-8 or WR-R-6-18 zoning districts, no limit established on the number of allowed signs, but signs may only be placed at turning/decision points within the public right-of-way, and only one each at each such location.

(b) Size. Commercial and real estate temporary portable signs shall not exceed 10 square feet per sign face, and no such sign shall contain more than two sign faces. Commercial and real estate temporary portable signs shall not exceed six feet in height, measured from the pre-existing ground level to the top of the sign.

(c) Location. No temporary portable commercial or real estate sign shall be located within vehicle lanes, bikeways, trails, sidewalks or median strips. No temporary portable commercial or real estate sign shall block driveways or be affixed to utility poles, fences, trees or traffic signs. No temporary portable commercial or real estate sign shall be strung between trees.

(d) Festoons Prohibited. The use of balloons, festoons, flags, pennants, lights or any other attached display on a commercial or real estate temporary portable sign is prohibited.

(e) Animation Prohibited. No commercial or real estate temporary portable sign shall be displayed while being rotated, waved, or otherwise in motion.

(f) Duration. Commercial temporary portable signs may be displayed only during daylight hours and when the commercial establishment to which they relate is open for business. Real estate temporary portable signs may be displayed only during daylight hours and when the real estate to which they relate is the subject of an open house or when a complex manager is available to show the unit.

(7) Political Signs. A sign which exclusively and solely advertises a candidate or candidate's public elective office, a political party, or promotes a position on a public, social, or ballot issue may be displayed in accordance with the following restrictions:

(a) On-Premises Signs. On-premises political signs located at the headquarters of a political party, candidate for public elective office, or a public issue decided by ballot are permitted. All on-premises political signs shall comply with the dimensional and location requirements of the zoning district in which it is located.

(b) Off-Premises Signs. Permits for political signs are not required.

(i) Location. Political signs may not be placed on private property without the permission of the property owner. In parking strips and public rights-of-way where the placement of a political sign may be fairly attributed to a neighboring property owner, permission of that owner must first be obtained prior to placement. Political signs may not be located so as to impede driver vision or represent an obstruction or hazard to vehicular or pedestrian traffic.

(ii) Prohibited on Public Property. It is unlawful for any person to paste, paint, affix or fasten any political sign on a utility pole or on any public building or structure. No political sign placed within the public right-of-way shall create a safety hazard for pedestrians or motorists, as determined by the police chief and/or city engineer.

(iii) Time Limitations. Political signs advertising a candidate for election or promoting a position on a ballot issue shall be removed within seven days following an election.

(iv) Responsibility for Compliance. The person(s) placing the political sign and the political candidate and/or campaign director shall be jointly responsible for compliance with this section.

(8) Land Use Action Notice. Where required pursuant to Chapter [22G.010](#) MMC, Article II, Public Notice Requirements, public notice signs which describe proposed land use actions and public hearing dates are permitted.

(9) Signs on Kiosks. Temporary signs on kiosks are permitted but the signs shall not exceed four square feet in area.

(10) Temporary Uses and Secondary Uses of Schools, Churches, or Community Buildings. Temporary signs relating directly to allowed temporary uses under the city's development regulations and secondary uses of schools, churches, or community buildings may be permitted for a period not to exceed the operation of the use, subject to the following requirements:

(a) Signs must be portable in nature.

(b) No more than one on-premises sign and one off-premises sign shall be permitted per temporary use.

(c) No sign shall exceed 10 square feet per sign face.

(d) Maximum sign height shall be six feet measured from the pre-existing ground level to the top of the sign.

(e) Signs shall not be portable readerboard types, electrical or neon. Only indirect lighting is allowed.

(f) A-board or sandwich signs may be used in compliance with this subsection, provided they are used only during the days the temporary or secondary use occurs and are removed after the use ceases for each day.

(g) Signs shall be secured with an approved tie-down.

(h) Signs shall be approved by the community development director before they are used. If a temporary use permit is required, this review shall take place as part of the temporary use application decision.

(11) Alcohol Advertising. Alcohol advertising shall comply with the provisions outlined in Chapter [314-52](#) WAC, Advertising, as amended.

(12) Any temporary sign not otherwise provided for under subsections (1) through (11) of this section shall comply with the development standards outlined in this chapter.

(13) Removal. The community development director or designee may immediately remove and dispose of unlawful temporary and special event signs at the expense of the person identified on such signs and/or the owner of the property on which said signs are located. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.240 Nonconforming signs.

(1) All existing signs in the city that were legally permitted and are not in compliance with the requirements of this chapter upon the effective date of the ordinance codified in this title are considered nonconforming signs. Nonconforming signs shall be made to conform with the requirements of this chapter under the following circumstances:

(a) When any new sign for which a sign permit is required by this chapter is proposed to be installed on a business site where a nonconforming sign or signs are located, one nonconforming sign of similar type as the proposed sign shall be removed or brought into conformance with this chapter for each new sign installed on a business site. For example, one existing nonconforming freestanding sign would need to be removed or brought into conformance for each new freestanding sign installed on a business site. A business site shall be considered both single-tenant and multi-tenant complexes. In no case shall an applicant be permitted signage that exceeds the maximum signage allowed in this chapter.

(b) A sign is relocated, altered, replaced, or changed in any way, including the sign structure or conversion of fixed copy to an electronic message center. This provision does not include a change in the face of the sign or advertising copy.

(c) A sign requires repairs beyond normal maintenance.

(d) Whenever the occupancy classification of a building is changed that results in an intensification of land use, as determined by the community development director.

(2) Normal maintenance such as cleaning, painting, light bulb replacement, or repair of broken placards, without any change in copy, is allowed so long as the repairs do not modify the sign structure or copy, or in any way structurally alter the sign. "Normal maintenance" does not include any of the items contained in subsection (1) of this section.

(3) All temporary and special events signs that do not conform to the requirements of MMC [22C.160.230](#) shall be removed within six months of the effective date of the ordinance codified in this title or, if located within an area being annexed to the city, within six months of the effective date of annexation, whichever is later. (Ord. 2983 § 4, 2015; Ord. 2852 § 10 (Exh. A), 2011).

22C.160.250 Amortization for billboard signs.

(1) Compliance. Any legal nonconforming billboard sign located within the corporate limits of the city shall be discontinued and removed from the property pursuant to this section no later than three years from the date of adoption by ordinance.

(2) Notice. The city will provide written notice of the expiration of the amortization period, as noted above, to the person, resident, or business responsible for such sign(s) at the last known address and to the owner of the property on which the sign is located. The city will utilize the tax assessor's office to find the latest, updated address for the property owner(s) in question. Such notice will be provided by mail, postmarked no later than nine months prior to expiration of the amortization period.

(3) Request for Consideration/Extension. The city has established the time period stated in subsection (1) of this section with the understanding that these time periods provide a reasonable time to recover the life expectancy of most signs. However, the city recognizes that there can be special or unusual circumstances that may fall outside of those parameters.

(a) Any person aggrieved by the imposition of the amortization clause may request review of the clause. The request for review shall be filed with the city not later than six months prior to the expiration of the amortization period. The review shall be heard by the hearing examiner. A fee will be charged based on the processing costs as provided in Chapter [22G.030](#) MMC.

(b) The aggrieved applicant has the burden of establishing the unreasonableness of the amortization period and must provide substantial evidence showing that the amortization period is unreasonable.

(c) The hearing examiner shall consider such things as lease obligations, remaining period of life expectancy of the nonconformance, depreciation, and the actual amount invested in the nonconforming sign.

(d) The hearing examiner shall consider the preservation and improvement of the city's physical environment, natural amenities, and desirable characteristics of the city as asserted in the purpose of the city's land use regulations as well as the goals and policies adopted in the city's comprehensive plan. The hearing examiner may consider any combination of these legitimate public concerns.

(e) The hearing examiner shall conduct a balancing of interest, considering the interest and hardship as to the applicant, and whether the hardship to the applicant reasonably overbalances the benefit that the public would derive from the termination of the nonconformance. If, after careful consideration, the hearing examiner determines that the amortization period, as applied to the applicant's nonconformance, would result in a greater hardship to the applicant than benefit to the public, the hearing examiner may extend the amortization period to a point in time when the balancing of interest would support the termination of the nonconformance. In no event should this amortization period be greater than three additional years.

(4) Annexations. Any legal nonconforming billboard on property annexed into the city at a later date shall be discontinued and removed within three years of the annexation or according to the annexation agreement established at the time of annexation. A three-year time extension may be approved by the hearing examiner, subject to the provisions contained in subsection (3) of this section. (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.260 Bonus allowance for outstanding design.

(1) Purpose. A maximum 50 percent sign area bonus and a maximum 25 percent height bonus shall be allowed under any of the following circumstances:

(a) There are exceptional circumstances or conditions, such as location of existing structures, lot configuration, topographic or unique physical features, that apply to the subject property which prohibit sign visibility.

(b) New developments greater than 10 acres in size that wish to consolidate the allowable signage. A minimum of two signs will be required to be consolidated for a bonus consideration.

(c) Contiguous or multi-tenant properties sharing the same street frontage that wish to consolidate allowable signage. A minimum of two signs will be required to be consolidated for a bonus consideration.

(2) Procedures. A request for a bonus allowance may be granted by the community development director subject to the approval criteria outlined in subsection (3) of this section. Appeal or request for reconsideration of the director's decision shall be made to the hearing examiner as an open record hearing in accordance with Chapter [22G.010](#) MMC, Article VIII, Appeals.

(3) Approval Criteria. A bonus will be approved if the community development director finds that the criteria below are met:

(a) The adjustment will not significantly increase or lead to street level sign clutter, to signs adversely dominating the visual image of the area, or to a sign that will be inconsistent with the objectives of a subarea master plan or special overlay district.

(b) The adjustment will not create a traffic or safety hazard.

(c) The adjustment will allow a unique sign of exceptional design or style that will:

(i) Achieve a positive and tasteful image;

(ii) Have good legibility;

(iii) Exhibit technical competence and quality in design, construction, and durability, and have standard details uncluttered by wires, angles, or other elements that detract from the appearance;

(iv) Relate to architectural features rather than obscure or disregard building planes;

(v) Present a harmonious relationship to other graphics and street furniture in the vicinity;

(vi) Be of a size that is in scale with the setting, building, or structure where located; and

(vii) Avoid glare.

(4) Application Requirements. An applicant requesting a bonus allowance under the provisions of this chapter shall submit the following:

(a) A letter in memorandum form outlining how the request is consistent with the criteria of this subsection.

(b) A site plan that is accurately drawn to an engineered scale that includes the following information:

- (i) Boundaries and dimensions of the site;
- (ii) Location of buildings, parking areas and adjacent streets;
- (iii) Graphic representations of all existing signs including their size, height and placement on the site;
- (iv) Graphic representation of the proposed sign(s) subject to the request; and
- (v) Building elevation showing the placement of the sign on that elevation, if applicable.

(5) Timing. The community development director or designee shall render a written decision on the requested bonus for outstanding design within 10 business days of submittal of all required elements and filing fee.

(6) Variance Required. Requests that exceed the 50 percent sign area bonus and 25 percent height bonus, those that do not comply with the purpose outlined in subsection (1) of this section, or those not related to allowable sign height or sign area shall be processed as a variance in accordance with MMC [22C.160.270](#). (Ord. 2852 § 10 (Exh. A), 2011).

22C.160.270 Variances.

Any person may apply for a variance from the requirements of this chapter. Sign variances shall be processed by the hearing examiner pursuant to the procedure set forth in Chapter [22G.060](#) MMC. Variance applications shall be processed pursuant to the review procedures outlined in Chapter [22G.010](#) MMC. A fee will be charged based on processing costs as provided for in Chapter [22G.030](#) MMC. In making any decision on a variance application, the permit authority must adopt findings of fact and conclusions based on those findings that address whether or not the application meets the following criteria for approval:

- (1) The variance does not conflict with the purpose and intent of the sign regulations;
- (2) The variance shall not constitute a grant of special privilege inconsistent with the limitation upon signage of other properties that have had to conform to the provisions of this chapter;
- (3) There are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that are not contemplated or provided for by this chapter;
- (4) The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and



Sign Regulation

This page provides a general overview of sign regulation in Washington State after the *Reed v Gilbert* court decision, including examples of post-*Reed* comprehensive sign codes and temporary sign regulation approaches.

For a list of key court decisions on this topic, see [Sign Regulation Court Decisions](#).

Overview of *Reed v. Gilbert*

The U.S. Supreme Court decision, *Reed v. Gilbert* (2015), prompted the need for most local governments to redraft their sign codes, because the typical method of regulating signs by content-type (such as political, ideological, directional, etc.) was deemed unconstitutional.

In *Reed*, the U.S. Supreme Court held that a town sign code that treats various categories of signs differently based on the information they convey violates the First Amendment. The town's sign code defined categories of temporary signs based on their message (e.g., directional, political, or ideological) and then subjected each category to different restrictions—for example: permissible size, number of signs, and duration of display.

The court held that the sign code provisions were content-based regulations of speech that did not survive strict judicial scrutiny because the town did not demonstrate that the code's differentiation between temporary directional signs (the type of sign at issue in the case) and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end.

For more details about the *Reed* decision and the Constitutional analysis, see the MRSC blog post, [US Supreme Court Issues Significant Sign Code Decision](#).

Note on Commercial Signs

Subsequent court decisions have held that the *Reed* holding does not extend to the regulation of commercial signs. As such, when reviewing challenges to regulation of commercial signs, courts will apply the four-part intermediate scrutiny analysis introduced in *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n* (1980). See *Contest Promotions v. City and County of San Francisco* (2017) and this MRSC blog post, [Ninth Circuit Holds Reed v. Town of Gilbert Does Not Extend to Commercial Speech](#). See also a review of significant state and federal cases addressing commercial sign regulation on our page, [Sign Regulation Court Decisions](#).

Content-Neutral Approaches to Sign Regulation

The primary takeaway of the *Reed* case is that local regulation of non-commercial signs must be content-neutral and that a sign code (or the enforcement of a sign regulation) will be subject to “strict scrutiny” judicial review if it applies different standards based on a sign’s content.

Many jurisdictions in Washington State have redrafted their sign regulations to focus on a sign’s physical and other non-content-based attributes, rather than content-based categories that had been typical in codes, such as whether a sign is political or ideological in nature. Factors considered in a content-neutral “time, place, or manner” approach may include:

- Location, such as commercial vs. residential locations, zoning districts, or placement in public right-of-way
- Dimensions, such as size and height
- Type of structure (for example, freestanding signs, monument signs, permanent façade signs, banner signs, and inflatable roof signs)
- Materials
- Number of signs allowed
- Maximum square footage
- Illuminated or not
- Fixed message signs vs. signs with changing messages (electronic or otherwise)
- Moving parts
- Portability (for example, A-frame or sandwich board signs)
- Condition of sign (abandoned, dilapidated, etc.)

Practice Tip

If your jurisdiction has not updated its sign code following the *Reed* decision, use caution in enforcing your existing sign regulations—especially against placement of any type of non-commercial signs. We recommend you consult your agency attorney prior to taking enforcement actions.

Examples of Comprehensive Sign Codes

Below are several examples of comprehensive sign codes regulating a variety of sign types and features (e.g., permanent, temporary, illuminated, digital, memorials, public/governmental, etc.) that were adopted after *Reed*. Note that MRSC does not attest to their compliance with *Reed* and the state and federal constitutions, however they do reflect different jurisdictions’ approaches to addressing the decision. Following these examples is a more detailed review of various temporary sign code provisions.

- [Bremerton Municipal Code Ch. 20.52](#)
- [Covington Municipal Code Ch. 18.55](#) - See also [Ordinance No. 08-2018](#) (2018)
- [Fircrest Municipal Code Ch. 22.26](#) - See also [Resolution No. 17-04](#) (2017) providing recommendations for approval from the planning commission and [Sign Code Update Comparison Table](#), along with the final [Ordinance No. 1598](#) (2017)
- [Gig Harbor Municipal Code Ch. 17.80](#)

- [Milton Municipal Code Ch. 17.50](#) - See also [Ordinance No. 1938-18](#) (2018)
- [Port Orchard Municipal Code Ch. 20.132](#) - See also [Ordinance No. 024-17](#) (2017)
- [Rainier Municipal Code Sec. 18.48.130](#)
- [Sammamish Municipal Code Ch. 21B.45](#)
- [Spokane Ordinance No. C35577](#) (2018)
- [Yakima Municipal Code Ch. 15.08](#)
- [Wenatchee Municipal Code Ch. 10.50](#)

Regulation of Temporary Signs (Including Political Signs)

The area of sign regulation most impacted by the *Reed* decision is the regulation of temporary signs—and more specifically, non-commercial temporary signs. This is generally inclusive of political, ideological, temporary event, community, and directional signs.

The *Reed* decision must be harmonized with Washington State law limiting certain restrictions on placement of political signs. In *Collier v. Tacoma* (1993), the Washington State Supreme Court struck down as unconstitutional a 60-day pre-election durational limit on political signs. The same court also held that political signs must be allowed in the parking strip area of the public right-of-way (the area between public streets and public sidewalks) because it is a traditional public forum. Post-*Reed* sign regulations should therefore allow all non-commercial temporary signs that would be inclusive of political signs in the same manner. For further information, see this blog post, [Regulating Non-Commercial Temporary Signs During Election Season](#), and the more detailed review of [Temporary Signs within Rights-of-Way and on Public Property](#) following the examples below.

Examples

Local governments have demonstrated a variety of creative approaches to regulating temporary signs in a way intended to withstand constitutional challenges. Below are some examples highlighting interesting features of the regulations. Note that methods and examples of regulating temporary signs in public rights-of-way and on public property are covered in more detail in the section below on [Temporary Signs within Rights-of-Way and on Public Property](#).

- [Wenatchee Municipal Code Sec. 10.50.160](#)
 - Expressly states, “The content of temporary signs is not regulated”
 - Offers a detailed purpose section ([Sec. 10.50.010](#)): “To preserve the right of free speech exercised through the use of signs containing noncommercial messages”
 - Provides graphic representation of six different types of temporary signs (e.g., large freestanding, small freestanding, wall banner, street banner, a-frame, etc.), followed by the “time, place, manner” regulations for each type
 - Defines “noncommercial signs” and “noncommercial speech signs”
 - Includes different standards for certain commercial signs on property associated with activities, such as residential real estate sales, construction, and exterior events
- [Oak Harbor Ordinance No. 1809](#)
 - Provides graphic representation of 13 types of temporary signs, labeling them as Type A, Type B, etc.

- Offers a matrix showing each sign type and including a short description of how each type is regulated by time, place, and manner (size, materials, installation)
- Includes both quantity and quality standards
- **Maple Valley Municipal Code Sec. 18.50.010** – Distinguishes between non-commercial temporary and commercial temporary signs. City continues to regulate differently based on the type of commercial activity or event that the sign is advertising (e.g., real estate, garage/yard sale, special sale, etc.).
- **Seattle Municipal Code Sec. 23.55.012** – Allows eight square feet of temporary signs per residence without limitation of duration. Allows additional signage, up to 32 square feet (for rigid signs), up to four times per year for 14 consecutive days.

Temporary Signs within Rights-of-Way and on Public Property

As described above, under the Washington State Constitution, political or campaign signs must be allowed within the parking strip portion of the public right-of-way (a traditional public forum), and there are limitations on the pre-election durational limits local governments may impose on such signs. See *Collier v. Tacoma* (1993).

After *Reed*, however, political signs should not be “called out” in a sign code or regulated differently than other non-commercial temporary signs. Therefore, local governments must establish standards for all non-commercial temporary signs that take into account Washington state law regarding political signs.

Temporary signs (including political signs) may be prohibited in many portions of the right-of-way including medians, traffic circles, the roadway itself, sidewalks, and areas that would cause safety concerns. In areas of the right-of-way where temporary signs must be allowed (i.e., parking or planting strip), most codes require the adjacent property owner’s consent to place the sign(s). Note that some local governments do prohibit temporary signs in parking strips adjacent to public property (see next section regarding signs on public property).

Regulations generally allow for removal of abandoned or dilapidated temporary signs in the right-of-way.

Temporary Signs on Public Property

Sign codes will generally prohibit placement of non-public temporary signs on public property (and adjacent rights-of-way), unless permitted pursuant to a special event or other permit (such as a street use permit). RCW 42.17A.555 prohibits the use of public facilities to support or oppose a candidate or ballot measure, so placement of temporary political signs on public property could potentially implicate this provision.

Note: This page does not cover the display of hand-held signs, distribution of flyers, etc., on public property.

Examples

Below are some examples of how local governments regulate placement of temporary signs in rights-of-way and public property.

- **Seattle Municipal Code Sec. 23.55.012**
 - Prohibits temporary signs on public property or in planting strips abutting public property
 - Allows temporary signs in planting strip adjacent to private property with owner or occupant consent
- **Everett Municipal Code Sec. 19.36.060**
 - Prohibits temporary signs in rights-of-ways adjacent to public facilities

- Requires abutting owner consent for placement in right-of-way adjacent to private property
 - **Enumclaw Municipal Code Sec. 19.10.210**
 - Sets a 60-day duration for temporary signs, except for temporary signs in the city right-of-way, which must be removed no more than 45-days after the November election
 - Limits areas of right-of-way where signs are permitted and requires abutting owner consent
 - **Gig Harbor Municipal Code Sec. 17.80.110** – Temporary signs are allowed in specific areas of right-of-way designated by the planning director and by permit only. Permits are self-issued stickers and must be current or the signs will be subject to removal.
 - **Yakima Municipal Code Sec. 15.08.11**
 - Temporary signs are to be promptly removed after the event for which it was intended
 - No signs on public property are allowed except as may be authorized through a special event permit
 - **Edgewood Municipal Code Sec. 18.97.240**
 - Approval of abutting property owner is *recommended*, but not required, for placement in right-of-way
 - Only staked signs are allowed in right-of-way except as allowed through a street use permit
-

Recommended Resources

- **MRSC Blog: Posts about Sign Regulation** – Articles written by MRSC staff and contributors about specific aspects of sign regulation, including court decisions and legislation. Articles are listed in reverse chronological order, with the most recent first.
- **Rocky Mountain Sign Law Blog** – Blog dedicated to sign law which summarizes latest case law and issues of interest
- **Sign Research Foundation** – Organization dedicated to fulfilling the educational, research and philanthropic purposes of on-premises signage
- **Scenic America** – National organization whose mission is to safeguard the scenic qualities of America's roadways, countryside, and communities

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Regulating Non-Commercial Temporary Signs During Election Season

October 14, 2020 by [Jill Dvorkin](#)

Category: [Elections](#), [Sign Control](#)



This blog post originally appeared in 2017 and has since been updated.

"Non-commercial temporary signs"? That's a mouthful! Why not just say political signs??

Well, after the 2015 U.S. Supreme Court decision, *Reed v. Gilbert*, thou shalt not regulate signs by content type. So, jurisdictions have redrafted their non-commercial sign regulations based on a sign's physical and other non-content-based attributes, such as

whether it's permanent or temporary, rather than categories typically seen in codes, such as whether a sign is political or ideological in nature.

MRSC has already written quite extensively [about the *Reed* decision](#) as well as regulation of political (I mean, "non-commercial temporary" signs) [post-*Reed*](#). The purpose of this blog post is to provide a brief refresher of how a jurisdiction may regulate these signs, as well as to provide links to some updated codes that regulate temporary signs post-*Reed*.

Background

Both state and federal courts are highly protective of political speech; therefore, regulations affecting political signs will be subject to the strictest scrutiny. Following *Reed*, this means that other non-commercial signs (formerly categorized as ideological, special event, etc.) that are temporary in nature should be allowed to be placed as liberally as political signs since jurisdictions aren't supposed to distinguish among these signs by content type.

Pre-*Reed* case law established some specific limitations on regulating political signs in Washington State and this remains good law. Below are answers to common questions regarding regulating political signage.

Can a local government place limits on the amount of time before an election that signs can be put up?

Although cities have tried to limit the amount of time before an election that political signs can be placed, the Washington State Supreme Court has held that limiting political signs to 60 days prior to an election is unconstitutional. In *Collier v. Tacoma*, 121 Wn.2d 737 (1993), the state supreme court ruled that it is not constitutional to limit the time in advance of an election that political signs can be posted in the places where political signs are allowed.

Can a local government require that signs be removed within a certain amount of time after an election?

The *Collier* court allowed a 10-day, post-election removal requirement. The court recognized that the rights of political expression do not weigh as heavily after an election, and it determined that the local government's interest in aesthetics and traffic safety outweighed any individual rights.

Note: after *Reed*, this post-election durational limit may be impractical given the difficulty in tracking when the sign was placed. However, it appears to still be legal under *Reed*. The D.C. Circuit Court of Appeals upheld a Washington D.C. regulation that imposed time limits on event signs posted on city lampposts. Even though the regulation requires that you read the sign to enforce it, the court held that the regulation was not targeting the "communicative content" of the sign. So, a regulation that limits how long a temporary sign can remain up following an event might withstand scrutiny under *Reed*. (See the 2016 ruling in *Act Now to Stop War and End Racism Coalition v. District of Columbia*, 846 F.3d 391)

Can a local government prohibit political and other signs in the public right-of-way?

Political signs cannot be prohibited in the areas between the street and sidewalk (or in the unpaved section of the right-of-way where there is no sidewalk), commonly referred to as the "parking strip." However, in our opinion, political signs can be prohibited in the untraveled area of a right-of-way that does not involve parking strips, such as in boulevard medians or in the middle of roundabouts.

May political signs be placed in a parking strip without the consent of the abutting property owner?

No. As a general rule, the public right-of-way, which include parking strips, is only an easement and the underlying property belongs to the abutting property owner. As such, only that property owner or the tenant of the property owner may determine what, if any, political signs are placed in the parking strip.

How Are Washington Jurisdictions Regulating Signs?

We have compiled a number of examples of post-*Reed*/sign code updates on our [Sign Regulation](#) webpage. Jurisdictions have taken different approaches to regulating temporary signs but generally these approaches conform to the content-neutral principles set forth in *Reed* and allow placement of temporary signs in the right-of-way, with some limitations. Many of these codes address, for example, the number of temporary signs allowed and the materials a temporary sign can be made of.

Helpful Tips

If your jurisdiction's code has not yet been updated, staff should avoid enforcing the sign code regulations in a manner that treats non-commercial temporary signs differently based on content. Aside from that, continue to adhere to the limitations that have been in place for quite some time regarding regulating political signs.

Oh, and don't forget to vote!

MRSC is a private nonprofit organization serving local governments in Washington State. Eligible government agencies in Washington State may use our free, one-on-one [Ask MRSC service](#) to get answers to legal, policy, or financial questions.



About Jill Dvorkin

Jill joined MRSC as a legal consultant in June 2016 after working for nine years as a civil deputy prosecuting attorney for Skagit County. At Skagit County, Jill advised the planning department on a wide variety of issues including permit processing and appeals, Growth Management Act (GMA) compliance, code enforcement, SEPA, legislative process, and public records. Jill was born and raised in Fargo, ND, then moved to Bellingham to attend college and experience a new part of the country (and mountains!). She earned a B.A. in Environmental Policy and Planning from Western Washington University and graduated with a J.D. from the University of Washington School of Law in 2003.

[VIEW ALL POSTS BY JILL DVORKIN](#) ▶

(5) The granting of such variance would not increase the number of signs allowed by this chapter or that would allow a type of sign that is prohibited by this chapter.

Conditions may be imposed upon the application as deemed necessary to ensure compatibility with this chapter. (Ord. 2852 § 10 (Exh. A), 2011).


22C.160.280 Substitution. 

Notwithstanding anything in this chapter to the contrary, noncommercial copy expressing a personal, political, or religious point of view may be substituted for commercial copy on any lawful sign structure. (Ord. 2852 § 10 (Exh. A), 2011).

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE:

AGENDA ITEM: IGA 2022-05 Snohomish County Diversion Participation	AGENDA SECTION:	
PREPARED BY: Commander Wendy Wade	AGENDA NUMBER:	
ATTACHMENTS: IGA 2022-05 Snohomish County Diversion Participation	APPROVED BY: 	
	MAYOR	CAO
BUDGET CODE:	AMOUNT:	

The Diversion Center is a Snohomish County facility that provides temporary shelter and access to the individuals in need of a stable source of housing and services until alternative treatment or housing becomes available.

This agreement allows the City of Marysville to refer participants for inclusion to the Diversion Center. The City’s responsibility will be to employ an embedded social worker (Community Support Specialist) who will be designated to remain engaged with the referred participants and provide case management services and actively seek out post-diversion center services.

This IGA shall remain in effect until through December 21, 2022 and may be extended or renewed for up to 3 years with written notice from the County contingent on funding resources.

There is no fee for the City use of the Diversion Center at this time. The funds that support the Diversion Center are provided through State funding and the County Chemical Dependency and Mental Health tax revenue.

<p>RECOMMENDED ACTION: Staff recommends that council authorize the Mayor to sign the IGA with Snohomish County Diversion Center</p>
<p>COUNCIL ACTION:</p>

**INTERGOVERNMENTAL AGREEMENT IGA-2022-05
FOR
SNOHOMISH COUNTY DIVERSION PARTICIPATION**

This intergovernmental agreement for services between Snohomish County and the City of Marysville (this "Agreement"), is made and entered into this ____ day of _____, 2021, by and between Snohomish County, a political subdivision of the State of Washington (the "County"), and the CITY OF MARYSVILLE, a municipal corporation of the State of Washington (the "City").

In consideration of the mutual promises contained in this Agreement and the mutual benefits to result therefrom, the parties agree as follows:

1. Purpose of Agreement. The County operates the Snohomish County Diversion Center (the "Diversion Center"). The Diversion Center is a facility that provides temporary shelter and access to basic programs to individuals, in an effort to provide those individuals with a stable source of housing and services until alternative treatment or housing options become available. The purpose and intent of this Agreement is to allow the City to refer individuals identified by the City for inclusion in the Diversion Center Program in accordance with the rules and conditions set by the County.

2. Effective Date and Duration. This Agreement shall take effect upon execution by both Parties. This Agreement shall remain in effect through December 31, 2022, unless earlier terminated pursuant to the provisions of Section 13 below, PROVIDED HOWEVER, that the term of this Agreement may be extended or renewed for up to three (3) additional one (1) year terms by written notice from the County to the City, PROVIDED FURTHER that each Party's obligations after December 31, 2022, are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with applicable law.

3. Administrators. Each party to this Agreement shall designate an individual (an "Administrator"), who may be designated by title or position, to oversee and administer such party's participation in this Agreement. The parties' initial Administrators shall be the following individuals:

County Administrator (HS):

Cammy Hart-Anderson
Behavioral Health Division Manager
Snohomish County Human Services
3000 Rockefeller Avenue M/S 305
Everett, Washington 98201

City Administrator:

Wendy Wade
Police Commander
Marysville Police Department
1049 State Avenue
Marysville, WA 98270

Either party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other party.

4. County Services. As described in this Section 4, and subject to the conditions set forth in Section 5 below, the County will accept eligible individuals identified by the City (the "participants") for participation in the Diversion Center program. The Diversion Center program will provide temporary housing and access to basic services to eligible accepted individuals ("participants"). The County has contracted with a third party Contractor to administer the Diversion Center program and provide basic

Diversion Center Agreement
City of Marysville
IGA-2022-05
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services. The third party Contractor will provide short term temporary housing, access to services in the community, access to behavioral health services and/or referral, medication assisted detox treatment, and transition planning. In addition, the County will provide a participant meals, laundry equipment, storage for small personal items, and basic hygiene kits during his/her participation in the Diversion Center program. A participant's housing shall not exceed 15 days without written permission from the County.

4.1 Eligibility/Acceptance. In order to be eligible for the Diversion Center program, the County must determine, at a minimum: 1) the City has met its obligations under Section 5 of this agreement, 2) that the individual has successfully completed medical screening, described in Section 5.2, 3) the individual is at least 18 years old, 4) the individual is a voluntary program participant, stating a willingness to participate in services, and 5) the individual is willing to agree to a Release of Information as necessary to allow the County, the third party Contractor the City, and any referral agencies to coordinate services. The County shall have sole discretion to accept or decline City referred individual. The County may change or establish additional criteria for eligibility at any time. The County will make reasonable efforts to provide any changes in eligibility criteria to the City in advance of implementation of any change.

4.2 Denial. If an individual referred by the City is denied participation in the Diversion Center Program, the County shall notify the social worker or law enforcement officer of the non-acceptance and the reason for the non-acceptance. Notification may be made immediately in person to the City representative

4.3 Diversion Center Limits. The County shall have the right to set the number of City referred participants in the Diversion Center program. Should the Diversion Center beds be at capacity and therefore remaining beds available become limited, the City shall collaborate with Diversion Center management and other partners to come to an agreeable solution for utilization of available beds. The County's administrator shall have the final authority in determining the maximum number of concurrent participants a City may have. In the event that the County reduces the maximum number of participants for the City to a number less than the number of currently enrolled participants, the County shall work with the City to locate alternate options for transitional services prior to discharging participants.

4.4 Participant Removal. The County reserves the right remove an accepted participant at any time. The County will notify the City of its decision to remove the participant. Within 2 hours of receiving the County's notification, the City must remove the participant from the Diversion Center and return/transport the individual back to his/her community (jurisdiction).

5. City Responsibilities.

5.1 Embedded social worker. The City shall employ or contract with a law enforcement embedded social worker and/or social worker program modeled after the Snohomish County partnership between its Sheriff's Office and Human Services Department. Social workers shall be assigned to work in the field with City law enforcement officers to establish contact and relationships with potential participants prior to transporting to the Diversion Center.

5.2 Medical Screening. The City shall transport the referred individual to the Diversion Center. Individuals must successfully complete the Diversion Center's medical screen to move forward in the eligibility criteria review. If the referred individual does not successfully complete

the medical screening, the City will return to their community (jurisdiction) or transport the individual to the hospital, if medically necessary.

5.3 Participant case management by City. The City will designate at least one social worker to remain engaged with each City participant housed at the Diversion Center. The social worker will review the City participant's progress in the program. The City social worker shall maintain contact with the City participant no less frequently than weekly. A city social worker may need to contact a participant more frequently, as need on a case by case basis. The City social worker is expected to provide case management services, monitor participant progress, and while the participant is housed, actively seek out post-diversion center services.

5.4 Participants must be escorted. Participants shall be escorted by City staff when arriving at and departing from the Diversion Center.

5.5 Transportation. The City shall be responsible for funding or providing for the transportation of City participants to treatment, medical appointments, other services, or court as needed.

5.6 Responsive to third party Contractor. The third party Contractor responsible for administering the Diversion Center Program may contact the City to discuss a City Participant. The City shall respond to any contact from the Contractor about a participant within one (1) business day.

5.7 City provides discharge items. The City shall provide discharge supplies or items for City participants, as needed, upon discharge from the Diversion Center. Supplies may include, but are not limited to: a duffel bag or backpack, clothing/footwear, and transportation fare.

6. Cost to City. There is no fee for City use of the Diversion Center, given that the 2022 operations are fully supported through dedicated Washington State funding and Snohomish County Chemical Dependency and Mental Health tax revenue. In the event that funding from either source is reduced to the extent that other local sources of funding are necessary, the parties agree that the costs for the remainder of the term of this Agreement shall be renegotiated.

7. Incidental Costs. In the event a City participant needs incidental items or services, including any associated service fees, the City shall be responsible for paying for those incidental costs directly to the provider.

8. No participant rights. Participation in the Diversion Center program is voluntary. A participant may be removed from the Diversion Center program at any time, without cause.

9. Indemnification/Hold Harmless.

9.1 City Held Harmless. The County shall indemnify and hold harmless the City and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the County, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this agreement. In the event that any such suit based upon such a claim, action, loss, or damages is brought against the City, the County shall defend the same at its sole cost and expense; provided that the City reserves the right to participate in said suit if any principle of governmental or public law is involved; and if

final judgment in said suit be rendered against the City, and its officers, agents, and employees, or any of them, or jointly against the City and the County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

9.2 County Held Harmless. The City shall indemnify and hold harmless the County and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the City, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this agreement. In the event that any suit based upon such a claim, action, loss, or damages is brought against the County, the City shall defend the same at its sole cost and expense; provided that the County reserves the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the County, and its officers, agents, and employees, or any of them, or jointly against the County and the City and their respective officers, agents, and employees, or any of them, the City shall satisfy the same.

9.3 Waiver Under Washington Industrial Insurance Act. The foregoing indemnity is specifically intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Chapter 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

10. Insurance. Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and /or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying part to the indemnified party(s). Each Party shall provide the other with a certificate of insurance or letter of self-insurance annually as the case may be.

11. Compliance with Laws. In the performance of its obligations under this Agreement, each party shall comply with all applicable federal, state, and local laws, rules and regulations.

12. Default. If either the County or the City fails to perform any act or obligation required to be performed by it hereunder, the other party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have fifteen (15) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default ("Default") under this Agreement; provided, however, that if the non-performance is of a type that could not reasonably be cured within said fifteen (15) day period, then the non-performing party shall not be in Default if it commences cure within said fifteen (15) day period and thereafter diligently pursues cure to completion.

13. Early Termination.

13.1 Termination by the County. Except as provided in Section 13.3 below, the County may terminate this Agreement at any time, with or without cause, upon not less than thirty (30) days advance written notice to the City. The termination notice shall specify the date on which the Agreement shall terminate.

13.2 Termination by the City. The City may terminate this Agreement at any time, with or without cause, upon not less than thirty (30) days advance written notice to the County. The termination notice shall specify the date on which the Agreement shall terminate, the grounds for termination, and the specific plans for accommodating the affected participants.

13.3 Lack of Funding. This Agreement is contingent upon governmental funding and local legislative appropriations. In the event that funding from any source is withdrawn, reduced, limited, or not appropriated after the effective date of this Agreement, this Agreement may be terminated by the County immediately by delivering written notice to the City. The termination notice shall specify the date on which the Agreement shall terminate.

14. Notices. All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 3 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

15. Miscellaneous.

15.1 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document executed with the same formalities as required for this Agreement and signed by the party against whom such modification is sought to be enforced.

15.2 Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

15.3 Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County. In the event that a lawsuit is instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.

15.4 Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

15.5 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the

remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

15.6 No Waiver. A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

15.7 No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

15.8 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

15.9 Independent Contractor. The County will perform all Services under this Agreement as an independent contractor and not as an agent, employee, or servant of the City. The County shall be solely responsible for control, supervision, direction and discipline of its personnel, who shall be employees and agents of the County and not the City. The County has the express right to direct and control the County's activities in providing the Services in accordance with the specifications set out in this Agreement. The City shall only have the right to ensure performance.

15.10 No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

15.11 No Separate Entity Necessary. The parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

15.12 Ownership of Property. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either party in connection with its performance under this Agreement will remain the sole property of such party, and the other party shall have no interest therein.

15.13 No Third Party Beneficiaries. This Agreement and each and every provision hereof is for the sole benefit of the City and the County. No other persons or parties shall be deemed to have any rights in, under or to this Agreement.

15.14 Force Majeure. In the event either party's performance of any of the provisions of this Agreement become impossible due to circumstances beyond that party's control, including without limitation, force majeure, strikes, embargoes, shortages of labor or materials, governmental regulations, acts of God, war or other strife, that party will be excused from performing such obligations until such time as the Force Majeure event has ended and all facilities and operations have been repaired and/or restored.

15.15 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SNOHOMISH COUNTY:

THE CITY OF MARYSVILLE:

 Dave Somers Date
 Snohomish County Executive

 (Signature) Date

 (Name and Title)

Approved as to form only:

Approved as to form only:

 Deputy Prosecuting Attorney Date

 City Attorney Date

**CITY OF MARYSVILLE AGENDA BILL
EXECUTIVE SUMMARY FOR ACTION**

CITY COUNCIL MEETING DATE: 11/08/2021

AGENDA ITEM:	
Contract Extension for SCORE Jail Services	
PREPARED BY:	DIRECTOR APPROVAL:
Cmdr. Mark Thomas	
DEPARTMENT:	
Police – Jail	
ATTACHMENTS:	
Interlocal Agreement for Inmate Housing at SCORE jail facility	
BUDGET CODE:	AMOUNT:
Detention Professional Services # 00103 960.544400	Depending on use
SUMMARY:	

Since 2014 Marysville Police Department and the Marysville jail has had an Interlocal agreement with SCORE, (South Correctional Entity) jail facility, for housing inmates that have medical, behavioral, or mental health issues that exceed the capabilities of the current Marysville jail facility and or staff and resources.

The current ILA expires December 31st, 2021. We are proposing entering into a one year extension of the ILA with SCORE that would go through December 2022.

The yearly cost associated with this contract varies depending on use. The three year average, (2018, 2019, & 2020) is \$223,361. Instead of going with 5 guarantee beds at \$131.84 per bed per day, for a total daily cost of \$659.20 we are proposing reducing that number to 3 guarantee beds for a daily cost of \$395.52, which will reduce the yearly associated cost by \$96,244.

Daily Housing Rates

General Population – Guaranteed Beds \$131.84	No. of Beds: <u> 3 </u>
General Population – Non-Guaranteed Beds \$189.52	

Daily Rate Surcharges:

Mental Health – Residential Beds \$159.00
Medical – Acute Beds \$217.00
Mental Health – Acute Beds \$278.00

Booking Fee \$35.00

<p>RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor or sign and execute; The Interlocal Agreement for Inmate Housing with the SCORE jail facility</p> <p>RECOMMENDED MOTION: I move to authorize the Mayor to sign and execute ILA with SCORE.</p>

INTERLOCAL AGREEMENT FOR INMATE HOUSING

THIS INTERLOCAL AGREEMENT FOR INMATE HOUSING (hereinafter “Agreement”) is made and entered into by and between the SOUTH CORRECTIONAL ENTITY, a governmental administrative agency formed pursuant to RCW 39.34.030(3) (“SCORE”) and the CITY OF Marysville a municipal corporation organized under the laws of the State of Washington (hereinafter the “Contract Agency” together with SCORE, the “Parties” or individually a “Party”).

RECITALS

WHEREAS, SCORE was formed by its Owner Cities (as defined herein) as a governmental administrative agency pursuant to RCW 39.34.030(3) to operate and maintain a consolidated correctional facility located in the city of Des Moines (the “SCORE Facility”) to serve the Owner Cities, federal and state agencies and other local governments that contract with SCORE from time to time to provide correctional services essential to the preservation of the public health, safety and welfare; and

WHEREAS, the Contract Agency desires to transfer custody of certain inmates to SCORE to be housed at the SCORE Facility; and

WHEREAS, this Agreement is entered into by and between the Parties pursuant to chapters 39.34 and 70.48 RCW, which provide for interlocal agreements for sharing of correction/detention facilities between local governments;

In consideration of the mutual covenants, conditions, and promises contained herein, the Parties hereto mutually agree as follows:

SECTION 1. DEFINITIONS.

Terms defined in the recitals of this Agreement are incorporated herein as if fully set forth in this Agreement. Capitalized terms used herein shall have the following meanings. Terms not otherwise defined herein shall have the meanings set forth in the Interlocal Agreement.

Detainer means a legal order authorizing or commanding another agency a right to take custody of a person.

Commencement Date means January 1, 2022.

Contract Agency Inmate means a person or persons subject to the Contract Agency’s custody who is transferred to SCORE’s custody under this Agreement.

Daily Bed Rate means the daily rate the Contract Agency is charged to occupy a general population bed, as set forth in Exhibit A.

Daily Surcharge Rates means any of the following special charges as defined in Exhibit A: Daily Surcharge Rates: Medical-Acute; Mental Health-Acute; and Mental Health-General Population.

Guaranteed Bed Rate means a reduced Daily Bed Rate - Guaranteed, as set forth in Exhibit A.

Inmate means a person or persons transferred to SCORE’s custody to be housed at the SCORE Facility. The term “Inmates” includes Contract Agency Inmates.

Interlocal Agreement means the Amended and Restated SCORE Interlocal Agreement dated as of October 1, 2009 and amended December 11, 2019, executed among the parties thereto for the purpose of forming SCORE.

Mental Health - Residential Beds means Inmates clinically determined by SCORE Health Services Provider, or its successor charged with the same duties, as needing ongoing mental health care services and specialized housing in SCORE's Mental Health - Residential Unit.

Medical – Acute Beds means an Inmate clinically determined by SCORE Health Services Provider, or its successor charged with the same duties, as needing the level of medical services and housing provided in SCORE's medical clinic.

Mental Health – Acute Beds means an Inmate clinically determined by SCORE Health Services Provider, or its successor charged with the same duties, as needing the level of psychiatric services and specialized housing in SCORE's Mental Health - Acute Unit.

Owner City has the meaning set forth in the Interlocal Agreement.

Non-Guaranteed Bed Rate means a higher daily housing bed rate and subject to availability, as set forth in Exhibit A.

SCORE Facility means the correctional facility maintained and operated by SCORE located at 20817 17th Avenue South, Des Moines, WA 98198.

Termination Date means December 31, 2022.

SECTION 2. TERM.

This Agreement shall commence at 12:00 a.m. PST on the Commencement Date and terminate at 11:59 p.m. PST on the Termination Date, unless sooner terminated by either Party in accordance with this Agreement. This Agreement may be renewed for any successive period by written addendum under terms and conditions acceptable to the Parties.

SECTION 3. INMATE HOUSING AND SERVICES.

Subject to the terms of this Agreement, SCORE hereby agrees to accept Contract Agency Inmates and to provide housing, care, and custody of those Contract Agency Inmates pursuant to SCORE policies and procedures. Additional related services and associated fees, if any, to be provided to Contract Agency Inmates and/or the Contract Agency are listed in Exhibit A.

To the greatest extent permitted by law, SCORE shall have the right to refuse to accept an individual in custody of the Contract Agency or to return any Contract Agency Inmate to the Contract Agency for any reason, including but not limited to if, in the sole discretion of SCORE, such individual presents a substantial risk of escape, of injury to self or other persons or property, of adversely affecting or significantly disrupting the operations of the SCORE Facility, and/or has a medical illness or injury that makes housing such individual not in the best interest of SCORE or other Inmates as described in Exhibit D. Final acceptance of an individual based on illness or injury is determined upon approval of medical staff at the time of booking.

SECTION 4. COMPENSATION.

In consideration of SCORE's commitment to provide housing and related services for Contract Agency Inmates, the Contract Agency agrees to pay SCORE the fees and charges set forth in Exhibit A.

Such fees and charges may include, but are not limited to, booking, daily bed rate, medical and specialty, mental health, transportation, security, other charges and/or negotiated fees.

SCORE may from time to time revise the fees and charges for housing and related services under this Agreement during the term of this Agreement. SCORE shall give advance notice of any change to its fees and charges for such service in order to allow the Contract Agency sufficient time to adjust its annual budget. Unless otherwise agreed to by the Parties hereto, any new fees and charges under a new fee schedule shall become effective on January 1 of the following year.

The Contract Agency shall acknowledge receipt of the rates and charges schedule in writing and such acknowledgement shall be deemed to be an amendment to this Agreement and incorporated as if fully set forth herein without the necessity of a formal amendment or separate approval by the legislative authority of the Contract Agency or the Administrative Board of SCORE.

SECTION 5. TRANSPORTATION, BOOKING, CLASSIFICATION, DISCIPLINE AND RELEASE PROCEDURES.

- A. Transportation. The Contract Agency is responsible for the transportation of Contract Agency Inmates to the SCORE Facility, including all costs associated therewith.
- B. Booking. Contract Agency Inmates shall be booked pursuant to SCORE's booking policies and procedures. Pursuant to RCW 70.48.130, and as part of the booking procedure, SCORE shall obtain general information concerning the Contract Agency Inmate's ability to pay for medical care, including insurance or other medical benefits or resources to which a Contract Agency Inmate is entitled. The information is used for third party billing.
- C. Classification. Contract Agency Inmates shall be classified pursuant to SCORE's classification policies and procedures, and within the sole discretion and reasonable judgment of SCORE. The Contract Agency shall provide sufficient information regarding each Contract Agency Inmate as needed to allow SCORE to make such classification. Contract Agency Inmates shall be assigned to housing pursuant to SCORE's policies and procedures, and within the sole discretion and reasonable judgment of SCORE as provided in Exhibit F.
- D. Inmate Discipline. SCORE shall discipline Contract Agency Inmates according to SCORE policies and procedures and in the same manner which other Inmates are disciplined; provided, however, nothing contained herein shall be construed to authorize the imposition of a type of discipline that would not be imposed on a comparable Inmate, up to and including the removal of earned early release credits as approved by the Contract Agency.
- E. Release. Except for work programs or health care, and during emergencies, Contract Agency Inmates shall not be removed and/or released from the SCORE Facility without written authorization from the Contract Agency or by the order of a court of competent jurisdiction. Other jurisdictions may "borrow" a Contract Agency Inmate according to policies and procedures of SCORE and as listed in Exhibit G.

Contract Agency Inmates will be transported at the time of release as follows: SCORE will release each Contract Agency Inmates to the Contract Agency at a mutually agreeable location. Alternatively, SCORE will provide transportation upon release to either the closest Owner City of arrest, or the Owner City of residence, whichever is closer, unless confirmed transportation is available at the time of release. Additional fees, if any, for transportation outside of King County are included in Exhibit A.

Contract Agency Inmates for whom bail is posted, or who otherwise have a right to be released, may choose to remain in custody at the SCORE Facility by signing written waiver and return to the Contract Agency by the regularly scheduled transport, be released to a family Owner or friend with confirmed transportation, or be released via private taxi.

SECTION 6. INMATE MEDICAL RECORDS, CLOTHING, BEDDING, PROPERTY AND WORK PROGRAMS.

- A. Inmate Medical Records. Should a Contract Agency Inmate receive medical care for injuries or illness at the time of arrest and prior to booking at the SCORE Facility, the Contract Agency shall provide medical documentation pertaining to injury or illness to SCORE at the time of booking if the Contract Agency has access to such records. If the Contract Agency cannot provide such records, SCORE, in its sole discretion, may refuse to accept a Contract Agency Inmate.
- B. Inmate Property. SCORE agrees to provide each Contract Agency Inmate with necessary or appropriate clothing and essential hygiene items. SCORE shall accept, hold and handle, and return any Contract Agency Inmate property in accordance with SCORE's policies and procedures, and shall be responsible only for Contract Agency Inmate property actually delivered into SCORE's possession. In the event a Contract Agency Inmate is being transported from a Contract Agency designated detention or correction facility, it will be the responsibility of the Contract Agency to process the Contract Agency Inmate's property not delivered and accepted into SCORE's possession as provided in Exhibit E.
- C. Work Programs. SCORE may assign Contract Agency Inmates to work programs such as inside and outside work crews, kitchen and facility duties, and other appropriate duties pursuant to SCORE's policies and procedures and within the sole discretion and judgment of SCORE.
- D. Visitation. SCORE shall provide reasonable scheduled visitation for Contract Agency Inmates. Inmate visitation may be accessible via video connection by third party provider at off-site locations for an access fee. Complimentary video visit access is available at the SCORE Facility. Confidential telephones or visitation rooms shall be available to a Contract Agency Inmate to communicate with his or her legal counsel.
- E. Inmate Accounts. SCORE shall establish and maintain a non-interest bearing account for each Contract Agency Inmate. Upon returning custody of a Contract Agency Inmate to the Contract Agency, SCORE shall transfer the balance of that Contract Agency Inmate's account that is not subject to charges, to the Contract Agency Inmate or to the Contract Agency in the form of cash, check, debit card or other agreed upon method in the name of the Contract Agency Inmate.

SECTION 7. HEALTH CARE.

SCORE shall provide in-facility medical care commonly associated with corrections operations as guided by American Correctional Association (ACA) or National Commission on Correctional Health Care (NCCHC).

Contract Agency Inmates shall be responsible for co-payment for health services according to SCORE policy. The Contract Agency shall not be responsible to SCORE for Contract Agency Inmate co-payments. No Contract Agency Inmate shall be denied necessary health care because of an inability to pay for health services.

In-facility medical, dental, and mental health services are included in the daily rate set forth in Exhibit A. Should a Contract Agency Inmate require medical, mental health, dental, and/or other medical services at an outside medical or health care facility, SCORE shall notify the Contract

Agency's designee (either by written or electronic means) within a reasonable time period before the Contract Agency Inmate receives such medical, mental health, dental or any other medical services. Notwithstanding the foregoing, the Contract Agency acknowledges that such notice may not be reasonably possible prior to emergency care.

Except to the extent that a Contract Agency Inmate can pay pursuant to Section 5.B, the Contract Agency shall pay for all medical, mental health, dental or any other medical services or equipment that are required to care for Contract Agency Inmates outside of the SCORE Facility in addition to the charges listed in Exhibit A. Lack of prior notice shall not excuse the Contract Agency from financial responsibility for such expenses, and shall not be a basis for imposing financial responsibility for related medical expenses on SCORE. SCORE shall bear the expense of any such medical care necessitated by improper conduct of SCORE, or of its officers or agents.

If a Contract Agency Inmate is admitted to a hospital, the Contracting Agency will be responsible for hospital security unless other arrangements are made with SCORE. SCORE, in its sole discretion, may, or at the request of the Contract Agency shall, provide hospital security services for an additional charge as provided in Exhibit A.

SECTION 8. DETAINERS.

Warrants and Contract Agency Inmates in a "Detainer" status shall be handled according to SCORE policies and procedures and as provided in Exhibit B attached hereto.

SECTION 9. RELEASE OF HOLDS AND COURT APPEARANCES.

If a court of limited jurisdiction releases a hold on a Contract Agency Inmate still incarcerated at the SCORE Facility, SCORE will not facilitate further court appearances of that Contract Agency Inmate except if the Contract Agency wishes to use the video arraignment system at the SCORE Facility.

SECTION 10. ESCAPE; DEATH.

If a Contract Agency Inmate escapes SCORE's custody, SCORE shall notify the Contract Agency as soon as reasonably possible. SCORE shall use all reasonable efforts to pursue and regain custody of escaped Contract Agency Inmates.

If a Contract Agency Inmate dies while in SCORE custody, SCORE shall notify the Contract Agency as soon as reasonably possible. The King County Medical Examiner shall assume custody of the Contract Agency Inmate's body. Unless another agency becomes responsible for investigation, one or more Owner City shall investigate and shall provide the Contract Agency with a report of its investigation. The Contract Agency may participate in the investigation. If another agency becomes responsible for investigation, SCORE shall serve as a liaison or otherwise facilitate the Contract Agency's communication with and receipt of reports from the other agency.

The Contract Agency shall provide SCORE with written instructions regarding the disposition of the Contract Agency Inmate's body. The Contract Agency shall pay for all reasonable expenses for the preparation and shipment of the body. The Contract Agency may request in writing that SCORE arrange for burial and all matters related or incidental thereto and the Contract Agency shall be responsible for all costs associated with this request.

SECTION 11. REPORTING AND INSPECTION.

SCORE agrees to use reasonable efforts to work with the Contract Agency to provide access to and/or reports from jail management systems that provide statistical information about Inmates. The Contract Agency shall have the right, upon reasonable advance notice, to inspect the SCORE

Facility at reasonable times. During such inspections, the Contract Agency may interview Contract Agency Inmates and review Contract Agency Inmates' records. The Contract Agency shall have no right to interview Inmates housed for other jurisdictions or to review their records, unless Contract Agency is properly authorized to do so by the Inmate or the other jurisdiction.

SECTION 12. TECHNOLOGY.

SCORE and the Contract Agency may each permit the other continuous access to its computer database regarding all Contract Agency Inmates housed by SCORE. This continuous access feature may be accomplished through a computer link between a computer(s) designated by the Contract Agency and appropriate computer(s) of SCORE.

SECTION 13. BILLING AND PAYMENT.

SCORE shall provide the Contract Agency with monthly statements itemizing the name of each Contract Agency Inmate; the number of days of housing, including the date and time booked into the SCORE Facility and date and time released from SCORE; and itemization of any additional charges including a description of the service provided, date provided and reason for service. Payment shall be due to SCORE within 30 days from the date the bill is received. SCORE may bill the Contract Agency electronically. Payments not received by the 30th day shall bear interest at the rate of 1% per month until payment is received. Any fees or charges for Inmates housed on charges from multiple agencies (including but not limited to outside medical care) will be divided equally among those agencies.

SECTION 14. BILLING DISPUTE RESOLUTION.

The Contract Agency must provide written notice of dispute to SCORE within 60 days of billing or other disputed charges. SCORE shall respond in writing to such disputes within 60 days of receipt of such disputes. SCORE and the Contract Agency shall attempt to resolve the dispute by negotiation. If such negotiation is unsuccessful, either Party may refer the dispute to the SCORE Operations Board for resolution. The decision of the SCORE Operations Board is the final internal administrative remedy the Contract Agency must exhaust before pursuing other contractual, legal, equitable, or alternative dispute resolutions.

SECTION 15. INDEPENDENT CONTRACTOR.

In providing services under this Agreement, SCORE is an independent contractor and neither it nor its officers, nor its agents nor its employees are employees of the Contract Agency for any purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability. Neither shall the provision of services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of the Contract Agency under any applicable law, rule or regulation. Nothing in this Agreement is intended to create an interest in or give a benefit to third persons not signing as a Party to this Agreement.

SECTION 16. HOLD HARMLESS, DEFENSE, AND INDEMNIFICATION.

SCORE shall hold harmless, defend, and indemnify the Contract Agency, its elected officials, officers, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) (also including but not limited to claims related to false arrest or detention, alleged mistreatment, alleged violation of civil rights, injury, or death of any Contract Agency Inmate, or loss or damage to Contract Agency Inmate property while in SCORE custody) that result from or arise out of the acts or omissions of SCORE, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of SCORE's services, duties, and obligations under this Agreement.

The Contract Agency shall hold harmless, defend, and indemnify SCORE, its elected officials, officers, employees, and agents from and against any and all suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees) (also including but not limited to claims related to false arrest or detention, alleged mistreatment, alleged violation of civil rights, injury, or death of any Contract Agency Inmate, or loss or damage to Contract Agency Inmate property while in SCORE custody) that result from or arise out of the acts or omissions of the Contract Agency, its elected officials, officers, employees, and agents in connection with or incidental to the performance or non-performance of the Contract Agency's services, duties, and obligations under this Agreement.

In the event the acts or omissions of the officials, officers, agents, and/or employees of both the Contract Agency and SCORE in connection with or incidental to the performance or non-performance of the Contract Agency's and or SCORE's services, duties, and obligations under this Agreement are the subject of any liability claims by a third party, the Contract Agency and SCORE shall each be liable for its proportionate concurrent negligence in any resulting suits, actions, claims, liability, damages, judgments, costs and expenses and for their own attorney's fees.

Nothing contained in this section or this Agreement shall be construed to create a right in any third party to indemnification or defense.

SCORE and the Contract Agency hereby waive, as to each other only, their immunity from suit under industrial insurance, Title 51 RCW. This waiver of immunity was mutually negotiated by the Parties hereto.

The provisions of this section shall survive any termination or expiration of this Agreement.

SECTION 17. INSURANCE.

SCORE and the Contract Agency shall provide each other with evidence of insurance coverage, in the form of a certificate or other competent evidence from an insurance provider, insurance pool, or of self-insurance sufficient to satisfy the obligations set forth in this Agreement.

SCORE and the Contract Agency shall each maintain throughout the term of this Agreement coverage in minimum liability limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for its liability exposures, including comprehensive general liability, errors and omissions, auto liability and police professional liability. The insurance policies shall provide coverage on an occurrence basis.

Each Party shall provide to the other Party at least 30 days advance notice of any cancellation, suspension or material change in coverage.

SECTION 18. TERMINATION.

Either Party may terminate this Agreement, with or without cause, by providing the other Party with 90 days written notice of termination as provided in RCW 70.48.090.

SECTION 19. RECORDS.

The Parties hereto shall maintain all records, reports, and documents created, held or maintained under this Agreement and the services to be provided hereunder in accordance with chapter 42.56 RCW (the Washington Public Records Act), chapter 40.14 RCW (Preservation and Destruction of Public Records) and all other applicable federal, state and local laws and regulations.

SECTION 20. OPERATION OF SCORE FACILITY; PRISON RAPE ELIMINATION ACT.

SCORE shall manage, maintain, and operate the SCORE Facility in compliance with all applicable federal, state, and local laws and regulations. SCORE acknowledges and complies with the terms of the Prison Rape Elimination Act regarding custodial sexual misconduct as set forth in Exhibit C.

SECTION 21. HIPAA AND HITECH COMPLIANCE.

The Parties shall comply with all requirements of the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Health Information and Technology for Economic and Clinical Health Act (HITECH Act) as applicable, which relate to the Parties' responsibilities under this Agreement, as well as state laws and regulations including chapter 70.02 RCW.

SECTION 22. EQUAL OPPORTUNITY.

Neither Party shall discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, veterans and military status, political affiliation or belief or the presence of any sensory, mental or physical handicap in violation of any applicable federal law, Washington State Law Against Discrimination (chapter 49.60 RCW) or the Americans with Disabilities Act (42 USC 12110 *et seq.*).

SECTION 23. MISCELLANEOUS.

- A. Real or Personal Property. It is not anticipated that any real or personal property will be acquired or purchased by the Parties solely because of this Agreement.
- B. Assignment. This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by a Party to any other person or entity without the prior written consent of the other Party. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the assigning Party stated herein.
- C. Non-Waiver. The failure of either Party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.
- D. Severability. If this Agreement, or any portion of this Agreement, is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.
- E. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If any dispute arises between the Parties under any of the provisions of this Agreement, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the King County Superior Court, King County, Washington.
- F. Attorneys' Fees. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall be responsible for payment of its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit; however, nothing in this subsection shall limit the each Parties' right to indemnification under this Agreement.
- G. Approval and Filing. Each Party shall approve this Agreement by resolution, ordinance, motion or otherwise pursuant to the laws of the governing body of each Party. The signatures of the authorized signatories below shall constitute a presumption that such approval was properly obtained. A copy of this Agreement shall be filed and/or posted pursuant to chapter 39.34 RCW.

- H. Amendment. Except as otherwise provided in Section 4 of this Agreement, no waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless evidenced in writing signed by duly authorized representatives of both Parties.
- I. No Joint Venture or Partnership. No joint venture, separate administrative or governmental entity, or partnership is formed as a result of this Agreement
- J. Compliance with Applicable Laws and Standards. SCORE agrees to manage the Contract Agency Inmates and the SCORE Facility in accordance with applicable federal and state laws and regulations and to maintain staffing levels at the SCORE Facility in sufficient numbers and rank to maintain the safety of the public, staff, Inmates, and to reasonably carry out the provisions of this Agreement.
- K. Continuation of Performance. In the event that any dispute or conflict arises between the Parties while this Agreement is in effect, the Parties hereto agree that, notwithstanding such dispute or conflict, they shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities. Provided that if the Contract Agency fails to pay for the services provided by the SCORE, SCORE can cease providing such services until payment is made.
- L. Representatives; Notices. The individuals listed below the signature blocks included in this Agreement are designated as representatives of the respective Parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the Party making the change shall notify the other Party. Any notice or other communication given hereunder shall be deemed sufficient, if in writing and delivered personally to the addressee, or sent electronically or by certified or registered mail, return receipt requested, addressed as provided after the signature blocks included in this Agreement, or to such other address as may be designated by the addressee by written notice to the other Party.
- M. Entire Agreement. This Agreement, together with any subsequent amendments, constitutes the entire Agreement between the Parties and supersedes all prior agreements for inmate housing between the Parties.

SECTION 24. EXECUTION.

This Agreement shall be executed by the Parties hereto by their duly authorized representative. This Agreement may be executed in one or more counterparts.

THIS AGREEMENT is hereby effective as of the Commencement Date.

SOUTH CORRECTIONAL ENTITY

City of Marysville

Contract Agency Name

Signature

Signature

Date

Date

ATTESTED BY:

Signature

NOTICE ADDRESS:

NOTICE ADDRESS:

SOUTH CORRECTIONAL ENTITY
20817 17th Avenue South
Des Moines, WA 98198

Marysville Police Department

1635 Grove St

Marysville, WA 98270

Attention: Devon Schrum, Executive Director

Attention: Mark Thomas

Email: dschrum@scorejail.org

Email: mthomas@marysvillewa.gov

Telephone: (206) 257-6262

Telephone: 360-363-8321

Fax: (206) 257-6310

Fax:

DESIGNATED REPRESENTATIVE FOR PURPOSES OF THIS AGREEMENT:

DESIGNATED REPRESENTATIVE FOR PURPOSES OF THIS AGREEMENT:

Name: Devon Schrum

Name: Mark Thomas

Title: Executive Director

Title: Commander

Exhibit A
FEES AND CHARGES AND SERVICES

<u>Booking Fee:</u> ¹	\$35.00	
<u>Daily Housing Rates:</u>		
General Population – Guaranteed Beds	\$131.84	Number of Beds: <u>Three (3)</u>
General Population – Non-Guaranteed Beds	\$189.52	
<u>Daily Rate Surcharges:</u> ²		
Mental Health – Residential Beds	\$159.00	
Medical - Acute Beds	\$217.00	
Mental Health – Acute Beds	\$278.00	
<u>Health Care Services:</u> ³		
In-Facility Care	Included	
Co-Payments	Inmate responsibility	
Outside Medical Services	Contract Agency billed	
Emergency Care	Contract Agency billed	
Pharmaceuticals	Medications billed to Contract Agency	
<u>Transportation Fees:</u>		
SCORE Officer Transport	\$65.00/per hour	
Released at Owner City ⁴ Location	Included	
<u>Security Services:</u>		
Hospital Security	\$65.00/per hour	
<u>Video Court:</u>		
In-Custody Arraignment	Included	
<u>Other Terms & Conditions:</u>		

¹ Charged to the jurisdiction responsible for housing the inmate

² Surcharges are in addition to daily housing rates and subject to bed availability

³ Guided by American Correctional Association(ACA) and/or National Commission on Correctional Health Care (NCCCHC)

⁴ Auburn, Burien, Des Moines, Renton, SeaTac, Tukwila

Exhibit B**WARRANTS/OTHER COURT ORDERS/DETAINERS**

The following shall apply to Contract Agency Inmates who are subject to warrants from other jurisdictions or to other court orders for confinement or detainees:

1. When receiving a Contract Agency Inmate, the booking officers at SCORE shall review all paperwork provided by the Contract Agency for all grounds to hold the Contract Agency Inmate.
2. Prior to releasing a Contract Agency Inmate, SCORE shall check the NCIC and WACIC systems to determine if the Contract Agency Inmate is subject to any valid warrants or other detainees.
 - a) If the Contract Agency Inmate is subject to a warrant that is limited to King County, SCORE will, upon receiving written permission (e-mail) from the Contract Agency, transport the Inmate to the custodial agency for the jurisdiction that issued the warrant. However, SCORE will not assume responsibility to serve any such warrants.
 - b) If the Contract Agency Inmate is subject to a warrant from a western Washington jurisdiction outside King County, SCORE will either process the Inmate for transfer on the Cooperative Transport Chain or provide transfer to a jurisdiction that participates in Cooperative Transport Chain.
 - c) If the Contract Agency Inmate is subject to a warrant from an eastern Washington jurisdiction, SCORE will send the Inmate to a jurisdiction that participates in the Cooperative Transport Chain.
 - d) If, upon return from SCORE to the Contract Agency, the Inmate is subject to a warrant that provides for statewide extradition, SCORE will either transport the Inmate to the detention/correction facility in King County designated by the agency/jurisdiction that issued the warrant if it is in King County, or will send the Inmate to the agency/jurisdiction that issued the warrant on the Mini- Chain.

Exhibit C**PREA ACKNOWLEDGMENT - CUSTODIAL AND SEXUAL MISCONDUCT**

1. **Compliance**
SCORE agrees to ensure that all of its employees, contractors, vendors, and volunteers that have contact with Contract Agency Inmates comply with all federal and state laws regarding sexual misconduct including, but not limited to:
 - a) The Prison Rape Elimination Act of 2003 (PREA)
 - b) The standards for adult Prisons and Jails or Community Confinement Facilities, whichever is applicable, as promulgated by the US Attorney, and
 - c) Zero tolerance toward all forms of sexual abuse and sexual harassment.

2. **Monitoring**
SCORE agrees to provide the Contract Agency documented compliance with the Federal Prison Rape Elimination Act standards. Monitoring may include, but is not limited to:
 - a) Site visits,
 - b) Access to facility data, and
 - c) Review of applicable documentation.

3. **Contract Agency may terminate this Agreement**
 - a) Should SCORE fail to provide documentation that demonstrates that the SCORE is actively and effectively working toward and is making substantive progress toward achieving compliance; or
 - b) Should SCORE fail to maintain PREA compliance between auditing periods, after being given a reasonable opportunity to cure.

4. **The Contract Agency will terminate this Agreement**
 - a) Should SCORE elect to discontinue pursuit of PREA compliance;
 - b) Should SCORE be found in noncompliance through a PREA Audit and fail to cure such noncompliance within the identified time-frames; or
 - c) Should SCORE be found to be in egregious violation of PREA.

Exhibit D**MEDICAL ACCEPTABILITY**

SCORE shall determine the medical and mental acceptability of Inmates for booking or housing using the following guidelines. However, final acceptance is based upon approval of medical staff at the time of booking. Excluding criteria include but are not limited to:

1. Signs of untreated broken bones or dislocated joints.
2. Any injury or illness requiring emergency medical treatment.
3. Unconsciousness.
4. Inmates unable to stand and walk under their own power, unless they normally use an assistive device, such as a wheelchair, for mobility.
5. Bed bound individuals.
6. Individuals with attached IV or requiring IV medications.
7. Individuals requiring the use of oxygen tanks.
8. AMA (Against Medical Advice) from the hospital.
9. Individuals having had major invasive surgery within the last 72 hours. Non-invasive surgery such as oral surgery, laser-eye surgery and minor surgery may be evaluated on a case by case basis.
10. Wounds with drainage tubes attached.
11. Persons with Alzheimer's, dementia or other psychological conditions to the point where the Inmate cannot perform activities of daily living ("ADL's") or who do not have the capacity to function safely within a correctional environment.
12. Persons who are diagnosed as developmentally delayed and who do not have the capacity to function safely within a correctional environment or who cannot perform ADL's.
13. Persons undergoing chemotherapy and/or radiation treatment.
14. Persons undergoing dialysis.
15. Persons with suicidal ideations or gestures within the past 72 hours.
16. Persons, if prescribed, who have not taken psychotropic medications for at least 72 hours.
17. Persons who have by self-disclosure, admitted to attempting suicide within the last 30 days.
18. Persons who have attempted suicide during their current incarceration.
19. Persons displaying current psychotic episode.

Exhibit E**PROPERTY**

1. SCORE will *not accept or transport* the following:
 - a) Backpacks, suitcases, etc.
 - b) Unpackaged food products.
 - c) Food products in packaging that have been opened.
 - d) Any type of weapon (includes pocket knives).
 - e) Liquids.
 - f) Helmets or any kind.
 - g) Large items that will not fit into a common paper grocery bag.
 - h) Material deemed to be contraband.

SCORE will limit property returned with the Inmate to the Contract Agency according to these criteria.

Exhibit F**CLASSIFICATION**

SCORE maintains a classification plan to guide staff in the processing of individuals brought into the facility. The plan includes an initial screening process, as well as a process for determining appropriate housing assignments (28 CFR 115.42) and uses an objective screening instrument and procedures for making decisions about classification and housing assignments. The plan includes, and not limited to, an evaluation of the following criteria:

1. Behavior during arrest and intake process
2. Potential risk of safety to others or self
3. Medical needs
4. The inmate's own perception of his/her vulnerability
5. Any other criteria as deemed appropriate by the Executive Director or designee

The Contract Agency shall supply SCORE with the following Classification related information, if known to or in possession of the Contract Agency:

1. If the Contract Agency Inmate has been classified to a special housing unit.
2. If the Contract Agency Inmate has been classified as protective custody.
3. If the Contract Agency Inmate:
 - a) Is a violent offender or has displayed violent behavior during present or past incarcerations
 - b) Is identified as a threat to law enforcement
 - c) Is an escape risk

Exhibit G**BORROWING**

One contracting agency may “borrow” another Contract Agency’s Inmate as follows:

1. If a Contract Agency requests the transport of another contracting agency’s Inmate from SCORE the requesting agency must notify each agency with rights to custody of the Inmate, and if each agency with rights to custody of the Inmate notifies SCORE in writing (e-mail) of its approval, SCORE shall provide the requested transport to the requesting agency. SCORE will complete a custody transfer form that lists all outstanding detainers. The custody transfer paperwork will accompany the Inmate.
2. Once custody of the Inmate has been transferred to the requesting agency, it is the responsibility of the requesting agency to determine whether the Inmate shall be returned to the custody of SCORE, and if so, the requesting agency shall make all necessary and proper arrangements with SCORE and any agency with rights to custody of the Inmate, for the Inmate’s return according to the terms of this Agreement. The requesting agency, to the full extent permitted by law, defend, indemnify, save and hold harmless SCORE as provided in Section 16 of the Agreement.
3. SCORE will not track the Inmate once he or she has left the SCORE Facility.
4. If the Inmate is returned to the custody of SCORE, the requesting agency shall provide SCORE with sentencing/charge information. The requesting agency shall supply all pre-sentence, and post-sentence paperwork from agreeing agencies that authorized the borrowing of the Inmate. This will aid SCORE in determining split billing and release dates.
5. SCORE will transport the Inmate only to an agency that also contracts with SCORE for Inmate housing.

**CITY OF MARYSVILLE AGENDA BILL
EXECUTIVE SUMMARY FOR ACTION**

CITY COUNCIL MEETING DATE:

AGENDA ITEM:	
Contract Extension Jail Services Lake Steven police Department	
PREPARED BY:	DIRECTOR APPROVAL:
Cmdr. Mark Thomas	
DEPARTMENT:	
Police – Jail	
ATTACHMENTS:	
Interlocal Agreement for Inmate Housing at Marysville jail facility for Lake Stevens PD	
BUDGET CODE:	AMOUNT:
Revenue code: 00108 342.323601	Varies
SUMMARY:	

Since 1999 the Marysville Police Department and the Marysville jail has had an Interlocal Agreement with the Lake Stevens Police Department for housing inmates associated with a misdemeanor arrest and detention by Lake Stevens police officers.

This extension would represent the 15th extension of the original contract.

The current ILA expires December 31st, 2021. We are proposing entering into a six month extension of the current ILA, with no language or rate changes, with Lake Stevens that would go through June 30, 2022.

<p>RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor or sign and execute; The Interlocal Agreement for Inmate Housing for the Lake Stevens Police Department.</p> <p>RECOMMENDED MOTION: I move to authorize the Mayor to sign and execute ILA with Lake Stevens for Jail Services.</p>

AFTER RECORDING RETURN TO:

City of Marysville
 1049 State Avenue
 Marysville, WA 98270

**Fifteenth Amendment
 Interlocal Agreement for Jail Services
 Lake Stevens
 Effective January 1, 2022.**

THIS AMENDMENT TO INTERLOCAL AGREEMENT FOR JAIL SERVICES ("Agreement") is made and entered into by and between the CITY OF MARYSVILLE ("Marysville"), and the CITY OF LAKE STEVENS ("Lake Stevens").

WHEREAS, on September 27, 1999, Marysville and Lake Stevens entered into an Interlocal Agreement for Jail Services (hereinafter known as "Agreement"); and,

WHEREAS, the parties have amended the Agreement from time to time to reflect current costs and services; and

WHEREAS, the current Agreement ends on December 31, 2021, and the parties wish to extend the end date to June 30, 2022.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, Marysville and Lake Stevens mutually agree as follows:

1. **Section 5, Duration.** This agreement shall commence on January 1, 2022, and end on June 30, 2022.
3. Except as provided herein, all other terms and conditions of the Interlocal Agreement for Jail Services dated September 27, 1999 and all of the written amendments set forth above shall remain in full force and effect unchanged.
4. **APPROVALS AND FILING.** Each party shall approve this Agreement by resolution, ordinance or otherwise pursuant to the laws of the governing body of said party. The attested signature of the officials identified below shall constitute a presumption that such approval was properly obtained. A copy of this Agreement shall be filed with the Snohomish County Auditor's office or, alternatively, listed by subject on a public agency's web site or other electronically retrievable public source pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this _____ day of _____, 2021.

CITY OF LAKE STEVENS

CITY OF MARYSVILLE

By _____
Brett Gailey, Mayor

By _____
Jon Nehring, Mayor

DATE: _____

DATE: _____

APPROVED as to form:

APPROVED as to form:

By _____
_____, City Attorney

By _____
Jon Walker, City Attorney

DATE: _____

DATE: _____

Attest: _____
_____, City Clerk

Attest: _____
_____, Deputy City Clerk

SCHEDULE A

Effective January 1, 2020

Booking fee beginning January 1, 2020 \$123.24 **

Should Marysville decide to collect booking fees pursuant to RCW 70.48.390 from the funds possessed by the prisoner or defendant directly at the time of booking, the booking fee to be paid by the City of Lake Stevens for such prisoner or defendant shall be adjusted by a credit in favor of the City Lake Stevens of that sum actually paid by the prisoner or defendant.

Inmate transfer administrative fee \$20.00

In cases where Lake Stevens prisoners are relocated to another jail facility other than the Snohomish County jail, Lake Stevens agrees to pay Marysville an Inmate Transfer Administrative Fee of \$20.00 per prisoner.

Marysville Transportation Fee \$64.84 per trip

Lake Stevens agrees to pay Marysville a Transportation Fee of \$64.84 per prisoner for transportation to another facility or for transportation from another facility to the Marysville Municipal Court. For example: Transporting a prisoner from the Marysville Jail to the SCORE facility would be one trip. Transporting a prisoner from SCORE to the Marysville Municipal Court would be one trip. Transporting a prisoner from the Marysville Municipal Court back to SCORE would be one trip. The same examples would apply to transports to and from the Snohomish County Jail.

Daily maintenance fee \$94.84 **

Bed space as needed on a space available basis.

Video Court fee \$58.00

Lake Stevens agrees to pay Marysville a Video Court fee of \$58.00 per prisoner for each court appearance by video. Marysville in its discretion or upon request by Lake Stevens may cause a Lake Stevens inmate to appear for court hearings via the Marysville video court system. The use of video for court hearings will conform to procedures and rules of the Marysville Jail and the Marysville Municipal Court.

Snohomish County Jail

Lake Stevens gives Marysville the authority to receive and pay all Snohomish County Jail bills for the Lake Stevens Prisoners including those cases that are associated with the County District Court and not Marysville Municipal Court and to coordinate and move Lake Stevens Prisoners to and from Snohomish County Jail.

Other Jail Billings

Marysville will be reimbursed by Lake Stevens for all costs including Jail booking and Jail Bed and Daily Maintenance Fees and any other fee charged to Marysville by all other jail facilities for Lake Stevens Prisoners.

**Yearly COLA Increase on Booking Fees and Daily Maintenance Fees

Booking and Daily Maintenance Fees will be increased at a rate of 100% of the Seattle CPI-W June Index for the year prior with a minimum of 0% to a maximum of 2.25%. The rate increase will occur on January 1 of each year unless otherwise negotiated and agreed by the parties. (For example the June 2020 Seattle CPI-W index will set the amount of the January 1, 2021 increase to Booking and Daily Maintenance Fees.)

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE:

AGENDA ITEM:	
Contract for Services and Purchasing Agreement with AXON	
PREPARED BY:	DIRECTOR APPROVAL:
Assistant Chief Jim Lawless	
DEPARTMENT:	
Police	
ATTACHMENTS:	
<ul style="list-style-type: none"> • Master Services and Purchasing Agreement Between AXON and the City of Marysville • AXON Price Quote • PowerPoint Presentation 	
BUDGET CODE: Admin. Professional Services- #00103010 541000	AMOUNT: \$896,025.24
SUMMARY:	

The Marysville Police Department is currently engaged in a Body Worn Camera (BWC) pilot project, which began on September 28, 2021. The purpose of this pilot project is to evaluate the effectiveness of having officers equipped with the BWC when interacting with members of the public in order to provide an accurate, neutral accounting of the encounter. This allows for full transparency and provides additional protections for the community member(s) and the officer(s). In addition to this, the pilot project allows for the department to evaluate internal work flows/processes, as well as any potential impacts on our partners (IS, prosecutor, defense, court, etc.). At the completion of the pilot project, it is the department's desire and intention to implement a permanent, department wide BWC program.

During the most recent legislative session (2021), numerous criminal justice bills were passed, which included HB 1310 (Use of Force) and SHB 1223 (Recording of Custodial Interrogations). The BWC program will also provide the most effective and efficient means to meet the requirements contained within SHB 1223, which calls for audio/video recording of custodial statements, regardless of the location the interview is taking place. In addition to the BWC's, the department is looking to replace its current inventory of TASER devices, as they are beyond their serviceable life and no longer supported. The new model, TASER 7, further enhances this extremely valuable and effective less-lethal force option. The TASER 7 is also integrated into the overall AXON platform that interfaces with Evidence.com. The TASER 7 will "talk" to the BWC's and if drawn, will automatically activate all BWC's in the immediate area, capturing the event beginning 30 seconds prior to activation due to the built in buffering features.

Downloads from the BWC's take place directly into Evidence.com, which also provides the redaction, transcription, logging, tracking and dissemination functions for the video captured by the BWC, as well as inventory assignments of the BWC's, TASER 7's and related equipment.

This services agreement and pricing are for a 5-year term where all of the hardware, software and technical/training support are bundled and included in what is basically a leasing program. At the 30-month mark all BWC's will be replaced and they will again be replaced in November 2026. The total price for this agreement (including tax) is \$1,322,633.23; that is inclusive of

\$442,553.70 of bundle/negotiated discounts. The department has received \$276,000 in state grant funding to go toward this project, reducing the unfunded portion to \$1,046,025.24. The department has applied for and is awaiting a final decision on an additional \$200,000 grant request from the USDOJ. As part of the 2021-2022 budget, an agreement with AXON for a stand-alone version of Evidence.com was approved in the amount of \$30,000/yr. as an intended, on-going expense. That \$30,000/yr. amount would be “rolled” into this agreement, further reducing the total request by an additional \$150,000 for a final request for *new* funding to support the program to \$896,025.24. Again, this could be reduced even further by up to an additional \$200,000 should we receive the aforementioned USDOJ grant.

	Costs	Grant Funds*	Prior Approved Funding Evidence.com	Required Funding Requested
Year 1	\$276,000.76	\$276,608.00	\$30,000.00	(\$30,607.24)
Year 2	\$261,658.12		\$30,000.00	\$261,658.12
Year 3	\$261,658.12		\$30,000.00	\$261,658.12
Year 4	\$261,658.12		\$30,000.00	\$261,658.12
Year 5	\$261,658.12		\$30,000.00	\$261,658.12
Totals	\$1,322,633.24	\$276,608.00	\$150,000.00	\$896,025.24

*The department has applied for an additional USDOJ grant of \$200,000 and is awaiting an awarding decision.

RECOMMENDED MOTION:
 I move to authorize the Mayor to sign and execute the Master Services and Purchasing Agreement between AXON and the City of Marysville.



This Master Services and Purchasing Agreement (“**Agreement**”) is between Axon Enterprise, Inc., a Delaware corporation (“**Axon**”), and the agency on the Quote (“**Agency**”). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote (“**Effective Date**”). Axon and Agency are each a “**Party**” and collectively “**Parties**”. This Agreement governs Agency’s purchase and use of the Axon Devices and Services detailed in the Quote Appendix (“**Quote**”). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions.**

“**Axon Cloud Services**” means Axon’s web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

“**Axon Device**” means all hardware provided by Axon under this Agreement.

“**Quote**” means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency’s purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

“**Services**” means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated (“**Term**”).

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote (“**Subscription Term**”).

Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years (“**Renewal Term**”). For purchase of TASER 7 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3 **Payment.** Axon invoices upon shipment. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys’ fees.

4 **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB shipping point via common carrier. Title and risk of loss pass to Agency upon Axon’s delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

6 **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7 **Warranty.**

7.1 **Hardware Limited Warranty.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("CEW") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

7.2 **Claims.** If Axon receives a valid warranty claim for an Axon manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Device with the same or like Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering a Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

7.3 **Spare Axon Devices.** For qualified purchases, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.

7.4 **Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 **To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.**

7.4.2 **Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the 12 months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.**

8 **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

9 **Axon Device Warnings.** See www.axon.com/legal for the most current Axon Device warnings.



- 10 **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.
- 11 **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
- 12 **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
- 13 **Indemnification.** Axon will indemnify Agency's officers, directors, and employees ("**Agency Indemnitees**") against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's negligence or willful misconduct, or claims under workers compensation.
- 14 **IP Rights.** Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
- 15 **IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
- 16 **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.
- 17 **Termination.**
- 17.1 **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
- 17.2 **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
- 17.3 **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
- 18 **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be

understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for 5-years thereafter. Axon pricing is Confidential Information and competition sensitive. If Agency is required by law to disclose Axon pricing, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

19 General.

19.1 Force Majeure. Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.

19.2 Independent Contractors. The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

19.3 Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

19.4 Non-Discrimination. Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.

19.5 Export Compliance. Each Party will comply with all import and export control laws and regulations.

19.6 Assignment. Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.

19.7 Waiver. No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.

19.8 Severability. If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.

19.9 Survival. The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.

19.10 Governing Law. The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

19.11 Notices. All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc.
Attn: Legal
17800 N. 85th Street
Scottsdale, Arizona 85255
legal@axon.com

Agency: Marysville Police Dept.
Attn: Jim Lawless
1635 Grove Street
Marysville, Washington 98270-4301
jlawless@marysvillewa.gov

19.12 Entire Agreement. This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or

understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each representative identified below declares they have been expressly authorized to execute this Agreement as of the date of signature.

AXON:

Axon Enterprise, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____

AGENCY:

Marysville Police Dept.

Signature: _____

Name: _____

Title: _____

Date: _____

Axon Cloud Services Terms of Use Appendix**1** **Definitions.**

“Agency Content” is data uploaded into, ingested by, or created in Axon Cloud Services within Agency’s tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

“Evidence” is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

“Non-Content Data” is data, configuration, and usage information about Agency’s Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

“Personal Data” means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2 **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data (**“TASER Data”**). Agency may not upload non-TASER Data to Axon Evidence Lite.

3 **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon’s business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

4 **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

5 **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user’s use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user’s access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately

Title: Master Services and Purchasing Agreement between Axon and Agency

Department: Legal

Version: 12.0

Release Date: 12/18/2020

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if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.

To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.

- 6 **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.
- 7 **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
- 8 **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.
- 9 **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
- 10 **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.

Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
- 11 **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
- 12 **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

The Axon Records Subscription Term will end upon the competition of the Axon Records

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Subscription as documented in the Quote, or if purchased as part of an OSP 7 bundle, upon competition of the OSP 7 Term (“**Axon Records Subscription**”)

An “**Update**” is a generally available release of Axon Records that Axon makes available from time to time. An “**Upgrade**” includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

- 13** **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 13.1** copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - 13.2** reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
 - 13.3** access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 13.4** use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
 - 13.5** access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
 - 13.6** remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon’s or Axon’s licensors on or within Axon Cloud Services; or
 - 13.7** use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.
- 14** **After Termination.** Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
- 15** **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon’s data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
- 16** **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a “commercial item,” “commercial computer software,” “commercial computer software documentation,” and “technical data”, as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.

Master Services and Purchasing Agreement

- 17 **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.

Axon Customer Experience Improvement Program Appendix

- 1 **Axon Customer Experience Improvement Program (ACEIP)**. The ACEIP is designed to accelerate Axon’s development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Agency Content from all of its customers, to provide, develop, improve, and support current and future Axon products (collectively, “**ACEIP Purposes**”). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Agency will be a participant in ACEIP Tier 1. If Agency does not want to participate in ACEIP Tier 1, Agency can revoke its consent at any time. If Agency wants to participate in Tier 2, as detailed below, Agency can check the ACEIP Tier 2 box below. If Agency does not want to participate in ACEIP Tier 2, Agency should leave box unchecked. At any time, Agency may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.

1.1 ACEIP Tier 1.

- 1.1.1.** When Axon uses Agency Content for the ACEIP Purposes, Axon will extract from Agency Content and may store separately copies of certain segments or elements of the Agency Content (collectively, “**ACEIP Content**”). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Agency Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual (“**Privacy Preserving Technique(s)**”). For illustrative purposes, some examples are described in footnote 1¹. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Agency from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Agency request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Agency may revoke the consent granted herein to Axon to access and use Agency Content for ACEIP Purposes. Within 30 days of receiving the Agency’s request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency. In addition, if Axon uses Agency Content for the ACEIP Purposes, upon request, Axon will make available to Agency a list of the specific type of Agency Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices

¹ For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.

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applicable to the Agency Content or ACEIP Content (“Use Case”). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Agency notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Agency with a mechanism to obtain notice of that update or another commercially reasonable method to Agency designated contact) (“**New Use Case**”).

1.1.2. Expiration of ACEIP Tier 1. Agency consent granted herein, will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Agency’s request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency.

1.2 ACEIP Tier 2. In addition to ACEIP Tier 1, if Agency wants to help further improve Axon’s services, Agency may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2, grants Axon certain additional rights to use Agency Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed or de-identified data.

Check this box if Agency wants to help further improve Axon’s services by participating in ACEIP Tier 2 in addition to Tier 1. By checking this box, Agency hereby agrees to the Axon Customer Experience Improvement Program Tier 2 Terms of Service, available at <https://www.axon.com/sales-terms-and-conditions> and incorporated herein by reference.

Professional Services Appendix

- 1 **Utilization of Services.** Agency must use professional services as outlined in the Quote and this Appendix within 6 months of the Effective Date.
- 2 **Body-Worn Camera Full Service (BWC Full Service).** BWC Full Service includes advance remote project planning and configuration support and up to 4 consecutive days of on-site service and a professional services manager to work with Agency to assess Agency’s deployment and determine which on-site services are appropriate. If Agency requires more than 4 consecutive on-site days, Agency must purchase additional days. BWC Full Service options include:

<p>System set up and configuration</p> <ul style="list-style-type: none"> • Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories and custom roles based on Agency need • Register cameras to Agency domain • Troubleshoot IT issues with Axon Evidence and Axon Dock (“Dock”) access • One on-site session included
<p>Dock configuration</p> <ul style="list-style-type: none"> • Work with Agency to decide the ideal location of Docks and set configurations on Dock • Authenticate Dock with Axon Evidence using admin credentials from Agency • On-site assistance, not to include physical mounting of docks
<p>Best practice implementation planning session</p> <ul style="list-style-type: none"> • Provide considerations for the establishment of video policy and system operations best practices based on Axon’s observations with other agencies • Discuss the importance of entering metadata in the field for organization purposes and other best practice for digital data management • Provide referrals of other agencies using the Axon camera devices and Axon Evidence • Recommend rollout plan based on review of shift schedules
<p>System Admin and troubleshooting training sessions Step-by-step explanation and assistance for Agency’s configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence</p>
<p>Axon instructor training (Train the Trainer) Training for Agency’s in-house instructors who can support Agency’s Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations</p>
<p>Evidence sharing training Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies</p>
<p>End user go-live training and support sessions</p> <ul style="list-style-type: none"> • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
<p>Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide</p>
<p>Post go-live review</p>

- 3 **Body-Worn Camera Starter Service (BWC Starter).** BWC Starter includes advance remote project planning and configuration support and one day of on-site Services and a professional services manager to work closely with Agency to assess Agency’s deployment and determine which Services are appropriate. If Agency requires more than 1 day of on-site Services, Agency must purchase additional on-site Services. The BWC Starter options include:

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<p>System set up and configuration (Remote Support)</p> <ul style="list-style-type: none"> • Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories & custom roles based on Agency need • Troubleshoot IT issues with Axon Evidence and Axon Dock (“Dock”) access
<p>Dock configuration</p> <ul style="list-style-type: none"> • Work with Agency to decide the ideal location of Dock setup and set configurations on Dock • Authenticate Dock with Axon Evidence using “Administrator” credentials from Agency • Does not include physical mounting of docks
<p>Axon instructor training (Train the Trainer) Training for Agency’s in-house instructors who can support Agency’s Axon camera and Axon Evidence training needs after Axon’s has fulfilled its contracted on-site obligations</p>
<p>End user go-live training and support sessions</p> <ul style="list-style-type: none"> • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
<p>Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide</p>

4 **Body-Worn Camera Virtual 1-Day Service (BWC Virtual).** BWC Virtual includes all items in the BWC Starter Service Package, except one day of on-site services.

5 **CEW Services Packages.** CEW Services Packages are detailed below:

<p>System set up and configuration</p> <ul style="list-style-type: none"> • Configure Axon Evidence categories & custom roles based on Agency need. • Troubleshoot IT issues with Axon Evidence. • Register users and assign roles in Axon Evidence. • For the CEW Full Service Package: On-site assistance included • For the CEW Starter Package: Virtual assistance included
<p>Dedicated Project Manager Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Agency 4–6 weeks before rollout</p>
<p>Best practice implementation planning session to include:</p> <ul style="list-style-type: none"> • Provide considerations for the establishment of CEW policy and system operations best practices based on Axon’s observations with other agencies • Discuss the importance of entering metadata and best practices for digital data management • Provide referrals to other agencies using TASER CEWs and Axon Evidence • For the CEW Full Service Package: On-site assistance included • For the CEW Starter Package: Virtual assistance included
<p>System Admin and troubleshooting training sessions On-site sessions providing a step-by-step explanation and assistance for Agency’s configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence</p>
<p>Axon Evidence Instructor training</p> <ul style="list-style-type: none"> • Provide training on the Axon Evidence to educate instructors who can support Agency’s subsequent Axon Evidence training needs. • For the CEW Full Service Package: Training for up to 3 individuals at Agency • For the CEW Starter Package: Training for up to 1 individual at Agency



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TASER CEW inspection and device assignment

Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.

Post go-live review

For the CEW Full Service Package: On-site assistance included.

For the CEW Starter Package: Virtual assistance included.

6 **Smart Weapon Transition Service.** The Smart Weapon Transition Service includes:

Archival of CEW Firing Logs

Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW Smart Weapons that Agency is replacing with newer Smart Weapon models.

Return of Old Weapons

Axon's on-site professional service team will ship all old weapons back to Axon's headquarters.

Axon will provide Agency with a Certificate of Destruction

*Note: CEW Full Service packages for TASER 7 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

7 **Signal Sidearm Installation Service.** If Agency purchases Signal Sidearm Installation Service, Axon will provide one day of on-site Services and one professional services manager and will cover the installation of up to 100 Signal Sidearm devices per package purchased. Agency is responsible for providing an appropriate work area and ensuring all holsters that will have Signal Sidearm installed onto them are available on the agreed-upon installation date(s). Installation includes:

Removal of existing connection screws that affix a holster to a holster mount
Proper placement of the Signal Sidearm Mounting Plate between the holster and the mount
Reattachment of the holster to the mount using appropriate screws
Functional testing of Signal Sidearm device

8 **Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

9 **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.

10 **Access Computer Systems to Perform Services.** Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.

11 **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional Services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it

Title: Master Services and Purchasing Agreement between Axon and Agency

Department: Legal

Version: 12.0

Release Date: 12/18/2020

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- 12** **Acceptance.** When Axon completes professional Services, Axon will present an acceptance form (“**Acceptance Form**”) to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional Services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within 7 calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within 7 calendar days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional Services.
- 13** **Agency Network.** For work performed by Axon transiting or making use of Agency’s network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency’s network from any cause.

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Technology Assurance Plan Appendix

If Technology Assurance Plan (“TAP”) or a bundle including TAP is on the Quote, this appendix applies.

- 1 **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.
- 2 **Officer Safety Plan.** If Agency purchases an Officer Safety Plan (“OSP”), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
- 3 **OSP 7 Term.** OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month (“**OSP 7 Term**”).
- 4 **TAP BWC Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera (“**BWC Upgrade**”) as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon’s option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
- 5 **TAP Dock Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote (“**Dock Upgrade**”). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon’s option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon’s option.
- 6 **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.
- 7 **Upgrade Change.** If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
- 8 **Return of Original Axon Device.** Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
- 9 **Termination.** If Agency’s payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
 - 9.1 TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
 - 9.2 Axon will not and has no obligation to provide the Upgrade Models.
 - 9.3 Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.

TASER 7 Appendix

This TASER 7 Appendix applies to Agency’s TASER 7, OSP 7, or OSP 7 Plus purchase from Axon.

- 1 **Duty Cartridge Replenishment Plan.** If the Quote includes “**Duty Cartridge Replenishment Plan**”, Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
- 2 **Training.** If the Quote includes a training voucher, Agency must use the voucher within 1 year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency’s responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, “**Training Content**”), Agency may access Training Content. Axon will deliver all Training Content electronically.
- 3 **Extended Warranty.** If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a 5-year term, which includes the hardware manufacturer’s warranty plus the 4-year extended term.
- 4 **Trade-in.** If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount (“**Trade-In Units**”) to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

Agency Size	Days to Return from Start Date of TASER 7 Subscription
Less than 100 officers	30 days
100 to 499 officers	90 days
500+ officers	180 days

- 5 **TASER 7 Subscription Term.** The TASER 7 Subscription Term for a standalone TASER 7 purchase begins on shipment of the TASER 7 hardware. The TASER 7 Subscription Term for OSP 7 begins on the OSP 7 Start date.
- 6 **Access Rights.** Upon Axon granting Agency a TASER 7 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 7 CEW devices during the TASER 7 Subscription Term. Agency may not upload any non-TASER 7 data or any other files to Axon Evidence. Agency may not exceed the number of end users than the Quote specifies.
- 7 **Privacy.** Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body.
- 8 **Termination.** If payment for TASER 7 is more than 30 days past due, Axon may terminate Agency’s TASER 7 plan by notifying Agency. Upon termination for any reason, then as of the date of termination:

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- 8.1** TASER 7 extended warranties and access to Training Content will terminate. No refunds will be given.
- 8.2** Axon will invoice Agency the remaining MSRP for TASER 7 products received before termination. If terminating for non-appropriations, Axon will not invoice Agency if Agency returns the CEW, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within 30 days of the date of termination.
- 8.3** Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 7 plan.

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Axon Auto-Tagging Appendix

- 1 **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Agency's Computer-Aided Dispatch ("CAD") or Records Management Systems ("RMS"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Agency's CAD or RMS.
- 2 **Support.** For thirty days after completing Auto-Tagging Services, Axon will provide up to 5 hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, so long as long as Agency maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Agency changes its CAD or RMS.
- 3 **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
- 4 **Agency Responsibilities.** Axon's performance of Auto-Tagging Services requires Agency to:
 - 4.1 Make available relevant systems, including Agency's current CAD or RMS, for assessment by Axon (including remote access if possible);
 - 4.2 Make required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
 - 4.3 Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Agency safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
 - 4.4 Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
 - 4.5 Promptly install and implement any software updates provided by Axon;
 - 4.6 Ensure that all appropriate data backups are performed;
 - 4.7 Provide assistance, participation, and approvals in testing Auto-Tagging Services;
 - 4.8 Provide Axon with remote access to Agency's Axon Evidence account when required;
 - 4.9 Notify Axon of any network or machine maintenance that may impact the performance of the module at Agency; and
 - 4.10 Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
- 5 **Access to Systems.** Agency authorizes Axon to access Agency's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.

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Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus.

- 1 Axon Respond Subscription Term.** If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency.

If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date.

The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.

- 2 Scope of Axon Respond.** The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.

- 3 Axon Body 3 LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.

- 4 Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.

- 5 Axon Respond Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.

With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.

- 6 Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Aware services, including any Axon-provided LTE service.

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Add-on Services Appendix

This Appendix applies to Axon Citizen for Communities, Axon Redaction Assistant, and Axon Performance.

- 1** **Subscription Term.** If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as part of OSP 7, the subscription begins on the later of the (1) start date of the OSP 7 Term, or (2) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency.

If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency, or (2) first day of the month following the Effective Date.

The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.

- 2** **Axon Citizen Storage.** For Axon Citizen, Agency may store an unlimited amount of data submitted through the public portal (“**Portal Content**”), within Agency’s Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.

- 3** **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Agency, Axon will need to store call for service data from Agency’s CAD or RMS.



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250
 Q-345076-44489.889RT

Issued: 10/20/2021

Quote Expiration: 11/15/2021

EST Contract Start Date: 12/01/2021

Account Number: 106985

Payment Terms: N30

Delivery Method: Fedex - Ground

SHIP TO	BILL TO
Business;Delivery;Invoice;Other-1635 Grove St 1635 Grove St Marysville, WA 98270-4301 USA	Mayville Police Dept 1635 Grove St Marysville, MN 98270 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Robbie Taylor Phone: (480) 502-6274 Email: rtaylor@axon.com Fax:	Jim Lawless Phone: (360) 363-8310 Email: jlawless@marysvillewa.gov Fax:

Program Length	60 Months
TOTAL COST	\$1,211,357.39
ESTIMATED TOTAL W/ TAX	\$1,322,633.23

Bundle Savings	\$428,813.70
Additional Savings	\$13,740.00
TOTAL SAVINGS	\$442,553.70

PAYMENT PLAN			
PLAN NAME	INVOICE DATE	TAX AMOUNT	AMOUNT DUE
Year 1	Nov, 2021	\$23,220.51	\$276,000.76
Year 2	Nov, 2022	\$22,013.83	\$261,658.12
Year 3	Nov, 2023	\$22,013.83	\$261,658.12
Year 4	Nov, 2024	\$22,013.83	\$261,658.12
Year 5	Nov, 2025	\$22,013.83	\$261,658.12

Quote Details

Bundle Summary

Item	Description	QTY
Core+	2021 Core+	108
ProLicense	Pro License Bundle	10
VRCK	VR Controller Kit	2
DynamicBundle	Dynamic Bundle	1

Bundle: Pro License Bundle Quantity: 10 Start: 12/1/2021 End: 11/30/2026 Total: 23400 USD

Category	Item	Description	QTY	List Unit Price	Tax	Net Unit Price	Total(USD)
E.com License	73746	PROFESSIONAL EVIDENCE.COM LICENSE (Formerly SKU 73746)	10	\$39.00	\$2,176.20	\$39.00	\$23,400.00
A La Carte Storage	73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	30	\$0.00	\$0.00	\$0.00	\$0.00

Bundle: VR Controller Kit Quantity: 2 Start: End: Total: 0 USD

Category	Item	Description	QTY	List Unit Price	Tax	Net Unit Price	Total(USD)
Controller Case	20188	VR CONTROLLER KIT PELICAN CASE	2	\$200.00	\$0.00	\$0.00	\$0.00
Controller	20298	VR-ENABLED GLOCK 17 CONTROLLER	2	\$750.00	\$0.00	\$0.00	\$0.00
Tablet	20296	SAMSUNG S7+ TABLET FOR VR SIMULATOR	2	\$1,000.00	\$0.00	\$0.00	\$0.00
Tablet Case	20297	SAMSUNG S7+ TABLET CASE FOR VR SIMULATOR	2	\$60.00	\$0.00	\$0.00	\$0.00
Standoff Cartridges	22196	TASER 7 VR CARTRIDGE, STANDOFF (3.5-DEGREE)	4	\$90.00	\$0.00	\$0.00	\$0.00
CQ Cartridges	22197	TASER 7 VR CARTRIDGE, CLOSE-QUARTERS (12-DEGREE)	4	\$90.00	\$0.00	\$0.00	\$0.00

Bundle: 2021 Core+ Quantity: 108 Start: 12/1/2021 End: 11/30/2026 Total: 1030319.99 USD

Category	Item	Description	QTY	List Unit Price	Tax	Net Unit Price	Total(USD)
Signal Sidearm Kit	75015	SIGNAL SIDEARM KIT	108	\$249.00	\$1,765.97	\$175.82	\$18,988.91
Warranty	80465	EXT WARRANTY, MULTI-BAY DOCK (TAP)	13	\$21.00	\$1,075.65	\$14.83	\$11,566.21

Camera Warranty	80464	EXT WARRANTY, CAMERA (TAP)	108	\$11.67	\$4,965.99	\$8.24	\$53,397.74
E.com License	73746	PROFESSIONAL EVIDENCE.COM LICENSE (Formerly SKU 73746)	108	\$39.00	\$16,595.85	\$27.54	\$178,450.04
Respond License	73449	RESPOND DEVICE LICENSE	108	\$5.00	\$2,127.67	\$3.53	\$22,878.21
Device Storage	73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE	108	\$24.00	\$10,212.84	\$16.95	\$109,815.41
Multi-bay Dock Refresh 1	73689	MULTI-BAY BWC DOCK 1ST REFRESH	13	\$1,610.00	\$1,374.46	\$1,136.85	\$14,779.04
Auto Tagging	73682	AUTO TAGGING LICENSE	108	\$9.00	\$3,829.81	\$6.36	\$41,180.78
Camera Refresh 1 with Spares	73309	AXON CAMERA REFRESH ONE	111	\$755.00	\$5,503.38	\$533.12	\$59,176.19
Multi-bay Dock Refresh 2	73688	MULTI-BAY BWC DOCK 2ND REFRESH	13	\$1,685.00	\$1,438.49	\$1,189.81	\$15,467.51
A La Carte Storage	73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	324	\$0.40	\$0.00	\$0.28	\$5,490.77
Camera Refresh 2 with Spares	73310	AXON CAMERA REFRESH TWO	111	\$790.00	\$5,758.50	\$557.83	\$61,919.45
Auto Tagging Implementation	79999	AUTO TAGGING / PERFORMANCE IMPLEMENTATION SERVICE	1	\$0.00	\$0.00	\$0.00	\$0.00
Fleet Signal Unit	70112	AXON SIGNAL UNIT	108	\$279.00	\$1,978.73	\$197.01	\$21,276.74
Installation	80129	SIGNAL ONLY OR ROUTER ONLY INSTALLATION PER VEHICLE	108	\$250.00	\$1,773.06	\$176.53	\$19,065.18
Spare Camera Warranty	80464	EXT WARRANTY, CAMERA (TAP)	3	\$11.67	\$137.95	\$8.24	\$1,483.27
Cable Assembly	70117	AXON SIGNAL UNIT, CABLE ASSEMBLY	108	\$25.00	\$177.30	\$17.65	\$1,906.52
Signal Sidearm Batteries	71044	BATTERY, SIGNAL SIDEARM, CR2430 SINGLE PACK	216	\$1.00	\$14.19	\$0.71	\$152.52
HALT Suit	20050	HOOK-AND-LOOP TRAINING (HALT) SUIT	2	\$750.00	\$98.51	\$529.59	\$1,059.18
Handle License	20248	TASER 7 EVIDENCE.COM LICENSE	108	\$5.00	\$2,127.67	\$3.53	\$22,878.21
Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	324	\$38.00	\$808.51	\$26.83	\$8,693.72
Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	324	\$38.00	\$808.51	\$26.83	\$8,693.72
Handles	20008	TASER 7 HANDLE, YLW, HIGH VISIBILITY (GREEN LASER), CLASS 3R	108	\$1,720.00	\$12,198.67	\$1,214.52	\$131,168.41
Inert Cartridges	22179	TASER 7 INERT CARTRIDGE, STANDOFF (3.5-DEGREE) NS	50	\$49.00	\$160.89	\$34.60	\$1,729.99
Inert Cartridges	22181	TASER 7 INERT CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	50	\$49.00	\$160.89	\$34.60	\$1,729.99
Admin License	20248	TASER 7 EVIDENCE.COM LICENSE	2	\$5.00	\$39.40	\$3.53	\$423.67
Taser 7 Target	80087	TASER 7 TARGET, CONDUCTIVE, PROFESSIONAL (RUGGEDIZED)	2	\$150.00	\$19.70	\$105.92	\$211.84
Spare Handles	20008	TASER 7 HANDLE, YLW, HIGH VISIBILITY (GREEN LASER), CLASS 3R	3	\$1,720.00	\$338.85	\$1,214.52	\$3,643.57
Taser 7 Target Frame	80090	TARGET FRAME, PROFESSIONAL, 27.5 IN. X 75 IN., TASER 7	2	\$75.00	\$9.84	\$52.96	\$105.92
Training Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-	216	\$38.00	\$539.01	\$26.83	\$5,795.81

		DEGREE) NS					
Training Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Live Cartridges	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Live Cartridges	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Batteries	20018	TASER 7 BATTERY PACK, TACTICAL	129	\$86.00	\$728.53	\$60.73	\$7,833.67
Master Instructor Course Vouchers	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1	\$1,495.00	\$0.00	\$1,055.65	\$1,055.65
Master Instructor Course Vouchers	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1	\$1,495.00	\$0.00	\$1,055.65	\$1,055.65
Master Instructor Course Vouchers	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1	\$1,495.00	\$0.00	\$1,055.65	\$1,055.65
Master Instructor Course Vouchers	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1	\$1,495.00	\$0.00	\$1,055.65	\$1,055.65
Master Instructor Course Vouchers	20119	TASER 7 MASTER INSTRUCTOR SCHOOL VOUCHER	1	\$1,495.00	\$0.00	\$1,055.65	\$1,055.65
Training Halt Cartridges	22177	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, STANDOFF NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Halt Cartridges	22177	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, STANDOFF NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Halt Cartridges	22178	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, CLOSE QUART NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Training Halt Cartridges	22178	TASER 7 HOOK-AND-LOOP TRN (HALT) CARTRIDGE, CLOSE QUART NS	216	\$38.00	\$539.01	\$26.83	\$5,795.81
Instructor Course Vouchers	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	1	\$375.00	\$0.00	\$264.79	\$264.79
Instructor Course Vouchers	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	1	\$375.00	\$0.00	\$264.79	\$264.79
Instructor Course Vouchers	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	1	\$375.00	\$0.00	\$264.79	\$264.79

Instructor Course Vouchers	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	1	\$375.00	\$0.00	\$264.79	\$264.79
Instructor Course Vouchers	20120	TASER 7 INSTRUCTOR COURSE VOUCHER	1	\$375.00	\$0.00	\$264.79	\$264.79
Docks	74200	TASER 7 6-BAY DOCK AND CORE	2	\$1,500.00	\$197.01	\$1,059.18	\$2,118.35
Dock Mount	70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	2	\$43.90	\$5.76	\$31.00	\$62.00
Dock Power Cord	71019	NORTH AMER POWER CORD FOR AB3 8- BAY, AB2 1-BAY / 6-BAY DOCK	2	\$10.45	\$1.38	\$7.38	\$14.76
Duty Cartridge Replenishment Program	20246	TASER 7 DUTY CARTRIDGE REPLACEMENT LICENSE	108	\$2.50	\$1,063.84	\$1.77	\$11,439.11
Camera	73202	AXON BODY 3 - NA10	108	\$699.00	\$4,957.49	\$493.58	\$53,306.23
Spare Camera	73202	AXON BODY 3 - NA10	3	\$0.00	\$0.00	\$0.00	\$0.00
USB	11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2	119	\$0.00	\$0.00	\$0.00	\$0.00
Dock	74210	AXON BODY 3 - 8 BAY DOCK	13	\$1,495.00	\$1,276.28	\$1,055.65	\$13,723.40
Power Cord	71019	NORTH AMER POWER CORD FOR AB3 8- BAY, AB2 1-BAY / 6-BAY DOCK	13	\$0.00	\$0.00	\$0.00	\$0.00
Other	80379	EXT WARRANTY, FLEET 2 SIGNAL UNIT	108	\$1.16	\$403.13	\$0.82	\$4,334.66
Other	80395	EXT WARRANTY, TASER 7 HANDLE	108	\$6.25	\$2,172.00	\$4.41	\$23,354.84
Other	80395	EXT WARRANTY, TASER 7 HANDLE	3	\$6.25	\$60.34	\$4.41	\$648.75
Other	80374	EXT WARRANTY, TASER 7 BATTERY PACK	129	\$0.42	\$174.34	\$0.30	\$1,874.62
Other	80396	EXT WARRANTY, TASER 7 SIX BAY DOCK	2	\$6.25	\$40.21	\$4.41	\$432.50
Holsters	20067	TASER 7 HOLSTER - BLACKHAWK, LEFT HAND	98	\$80.00	\$514.84	\$56.49	\$5,535.96
Holsters	20062	TASER 7 HOLSTER - BLACKHAWK, RIGHT HAND	10	\$80.00	\$52.54	\$56.49	\$564.89
Camera Mount	11507	MOLLE MOUNT, SINGLE, AXON RAPIDLOCK	95	\$0.00	\$0.00	\$0.00	\$0.00
Camera Mount	74018	Z-BRACKET MOUNT, MENS, AXON RAPIDLOCK	13	\$0.00	\$0.00	\$0.00	\$0.00

Bundle: Dynamic Bundle Quantity: 1 Start: 12/1/2021 End: 11/30/2026 Total: 157637.4 USD							
Category	Item	Description	QTY	List Unit Price	Tax	Net Unit Price	Total(USD)
Other	85147	CEW STARTER	1	\$2,750.00	\$0.00	\$2,750.00	\$2,750.00
Other	73478	REDACTION ASSISTANT USER LICENSE	118	\$9.00	\$5,925.96	\$9.00	\$63,720.00
Other	85144	AXON STARTER	1	\$2,750.00	\$255.75	\$2,750.00	\$2,750.00
Other	20370	FULL VR TASER 7 ADD-ON USER ACCESS	108	\$12.50	\$7,533.00	\$12.50	\$81,000.00
Other	74200	TASER 7 6-BAY DOCK AND CORE	4	\$1,500.00	\$558.00	\$1,500.00	\$6,000.00
Other	71019	NORTH AMER POWER CORD FOR AB3 8- BAY, AB2 1-BAY / 6-BAY DOCK	4	\$10.45	\$3.89	\$10.45	\$41.80
Other	70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	4	\$43.90	\$16.33	\$43.90	\$175.60

Other	80396	EXT WARRANTY, TASER 7 SIX BAY DOCK	4	\$6.25	\$111.60	\$6.25	\$1,200.00
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Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature

Date Signed

10/20/2021



AXON Project

Body Worn Cameras, TASER 7 (CEW) & Evidence.com

BODYWORN CAMERAS

CAPTURE
TRUTH





TASER 7

DE-ESCALATE WITH CONFIDENCE





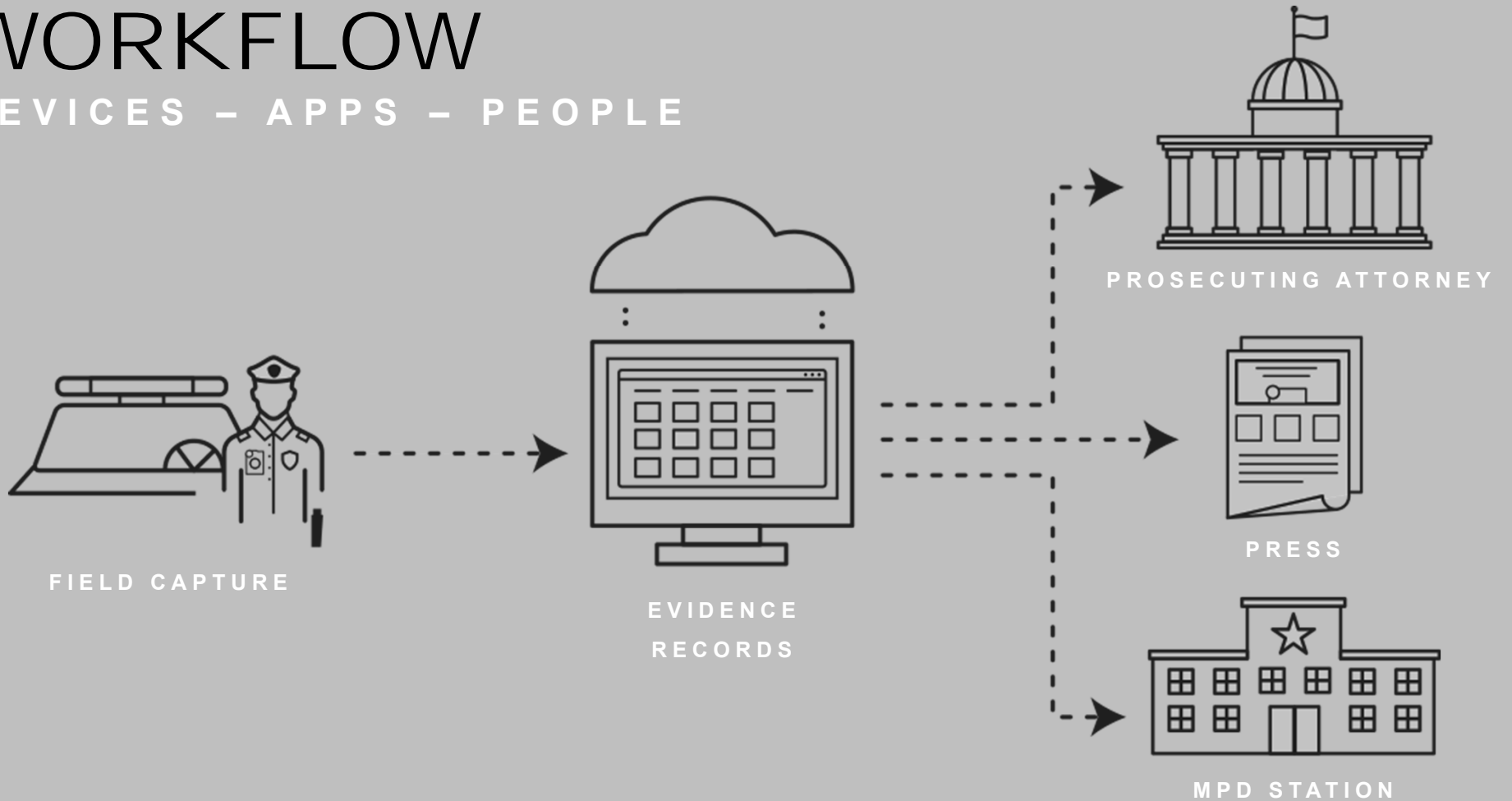
AXON EVIDENCE

THE DEMS FOR THE DEMANDS OF MODERN POLICING



WORKFLOW

DEVICES - APPS - PEOPLE



Program Costs

	Costs	Grant Funds*	Prior Approved Funding Evidence.com	Required Funding Requested
Year 1	\$276,000.76	(\$276,608.00)	(\$30,000.00)	(\$30,607.24)
Year 2	\$261,658.12		(\$30,000.00)	\$231,658.12
Year 3	\$261,658.12		(\$30,000.00)	\$231,658.12
Year 4	\$261,658.12		(\$30,000.00)	\$231,658.12
Year 5	\$261,658.12		(\$30,000.00)	\$231,658.12
		*Awaiting award decision from USDOJ for possible additional \$200,000		
Totals	\$1,322,633.24	(\$276,608.00)	(\$150,000.00)	\$896,025.24

Questions?

