

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE:** November 10, 2014

<b>AGENDA ITEM:</b> WSDOT Maintenance Agreement SR 9 Roundabout	
<b>PREPARED BY:</b> Jim Ballew	<b>DIRECTOR APPROVAL:</b>
<b>DEPARTMENT:</b> Parks and Recreation	
<b>ATTACHMENTS:</b> Maintenance Agreement Sign Rendering	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b>	

The City will be installing two (2) Gateway Signs within the new Roundabout structure located at SR 9 and 84<sup>th</sup> Street. Washington State Department of Transportation has approved the installation provided the City maintains the signage installed and surrounding landscape. The Agreement defines the City's responsibilities and Right of Entry.

**RECOMMENDED ACTION:**

Staff recommends the City Council consider approval of the Maintenance Agreement for the SR9 /84<sup>th</sup> Street Roundabout with the Washington State Department of Transportation and authorize the Mayor to sign the Agreement.

**GMB 1062**  
**MAINTENANCE – SR 9/84th (GETCHELL) ROUNDABOUT GATEWAY SIGNS**  
**CITY OF MARYSVILLE**

This Agreement is made and entered into between the Washington State Department of Transportation, hereinafter called the “STATE,” and the City of Marysville, hereinafter called the “CITY.”

WHEREAS, the STATE is constructing the SR 9 – 32<sup>nd</sup> Street SE and 84<sup>th</sup> Street NE Safety Improvements Project, , which includes the construction of one new roundabout located on STATE’s limited access right of way, on SR 9 and 84<sup>th</sup> Street within the CITY’s corporate limits, hereinafter referred to as the “Roundabout,” and

WHEREAS, the STATE will install two CITY entrance signs, including landscape features, hereinafter referred to as the “Signs” on SR 9 limited access right of way, and

WHEREAS, the STATE and the CITY wish to define the CITY’s maintenance responsibility for the Signs placed within the STATE’s right of way jurisdiction,

NOW, THEREFORE, pursuant to chapter 39.34 RCW and RCW 47.42.040(1) , 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 which is incorporated and made a part hereof,

**IT IS MUTUALLY AGREED AS FOLLOWS:**

**1. CITY MAINTENANCE RESPONSIBILITIES**

1.1 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 Signs as constructed within the Roundabout shown on Exhibit A.

1.1a The CITY, at the CITY’s sole cost and expense shall keep the Signs free of visually obstructive vegetation.

1.2 The CITY, at its sole cost and expense, shall make all necessary and reasonable efforts to adequately maintain the appearance of the Signs in the Roundabout, including but not limited to the repair of third party damages to the Signs and removal of graffiti or other unauthorized markings. The CITY agrees to immediately remove any offensive language or graphics.

1.3 Modification, replacement or relocation of the Sign.

1.3.1 If the CITY, in its sole discretion, determines that it is necessary to replace or modify the Sign, any replacement or modification shall require prior written approval by the STATE.

1.3.2 The CITY agrees to relocate and/or remove the Signs within thirty (30) calendar days of receipt of the STATE's written notice to perform such work in the event a state highway project requires removal or relocation. If the CITY does not relocate or remove the Signs, the Signs shall be removed by the STATE, and the CITY agrees to pay the STATE the actual direct and related indirect costs.

#### 1.4 Traffic Control

1.4.1 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.

1.4.2 The CITY agrees that all traffic control for any Sign maintenance or repair work within the SR 9 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, M54-44.

#### 1.5 Third Party Damage

1.5.1 The CITY agrees that it shall be responsible to repair all third party damage to the Sign.

### **2. FAILURE TO MAINTAIN**

2.1 In the event the CITY does not perform the work as identified in Section 1, the STATE reserves the right to perform the necessary work to the extent necessary for the safe operation and maintenance of SR 9. Should the STATE perform such work, the CITY agrees to pay the STATE the actual direct and related indirect costs in accordance with Section 2.5.

2.2 Should the CITY fail to perform its maintenance responsibilities which do not directly impact the construction, operation and maintenance of SR 9, or adversely affect the safety of the traveling public pursuant to this Agreement, the STATE will provide written notification to the CITY to perform the identified work within thirty (30) calendar days after receipt of said notification.

2.3 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) 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) day period.

2.4 The STATE may perform or begin planning for the needed work at the end of the thirty (30) day notice period. Should the STATE perform such work, the CITY agrees to pay the STATE the actual direct and related indirect costs in accordance with Section 2.5.

2.5 Should the STATE perform any of the work, it may be accomplished by use of STATE forces or by use of a contractor, and the STATE shall invoice the CITY for the actual direct and related indirect costs associated with the work performed. Upon receipt of a detailed, itemized invoice from the STATE, the CITY agrees to and shall make payment within thirty (30) calendar days. If the CITY objects to all or any portion of an invoice, it shall notify the STATE within twenty (20) calendar days from the date of receipt and shall pay only that portion of the invoice not in dispute. The STATE and the CITY shall immediately make every effort to settle the disputed portion, and if necessary utilize dispute resolution provided for in Section 9. The CITY agrees that if it does not make payment on undisputed portions of an invoice within ninety (90) days after receipt, the STATE may deduct and expend any monies to which the CITY is entitled to receive from the Motor Vehicle Fund as authorized by RCW 47.24.050.

### **3. EMERGENCY MAINTENANCE**

3.1 If the CITY's Public Works Director, or such official's functional successor are contacted and CITY forces are not available to perform emergency maintenance, the STATE reserves the right to perform the necessary emergency maintenance of the area to the extent necessary to allow for normal operation of highway operations and maintenance within the SR 9 right of way. Failure or inability of the CITY to perform necessary emergency maintenance will subject the emergency work to be performed by the STATE, or STATE's contractor, at the expense of the CITY in accordance with Section 2.5.

### **4. RIGHT OF ENTRY**

4.1 The STATE hereby grants to the CITY and its authorized agents, contractors, subcontractors, and employees a right of entry upon all land over which the STATE has jurisdiction, for the purpose of placing the Sign and accomplishing the maintenance work authorized herein.

### **5. TERMINATION**

5.1 This Agreement may be terminated only if mutually agreed to by the Parties. Conditions of termination shall be mutually agreed upon in writing and shall not be binding unless signed by persons authorized to bind each of the Parties.

5.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the STATE and the CITY prior to termination.

### **6. MODIFICATIONS AND WAIVERS**

6.1 This Agreement constitutes the entire agreement between the CITY and the STATE on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and unless all necessary approvals have been obtained prior to starting work. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the CITY and/or the STATE to enforce any provision of this Agreement shall not constitute a waiver by the CITY and/or the STATE of that or any other provision.

## **7. ASSIGNMENT**

7.1 Neither the STATE nor the CITY shall transfer or assign any right or obligation hereunder this Agreement without prior written consent of the other Party.

## **8. SEVERABILITY**

8.1 Should any part, 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. DISPUTE RESOLUTION**

9.1 In the event that a dispute arises under this Agreement, it shall be resolved as follows:

The CITY and the STATE shall each appoint a member to a Disputes Board; these two members shall select a third member not affiliated with either Party. The three-members to the Disputes Board shall conduct a dispute resolution hearing that shall be informal and unrecorded.

An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

## **10. LEGAL RELATIONS**

10.1 The CITY shall protect, defend, indemnify, and hold harmless the STATE, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, the CITY's installation of the Signs on SR 9 right of way and the maintenance work to be performed pursuant to the provisions of this Agreement to the extent caused by the negligent acts, errors, or omissions of the CITY, its employees, agents, and/or contractors. The CITY will not be required to indemnify, defend, or hold harmless the STATE if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the STATE. Where such claims, suits, or actions result from concurrent negligence of the STATE and the CITY, the indemnity provisions provided

herein shall be valid and enforceable only to the extent of each Party's own negligent acts, errors, or omissions.

10.2 In the event of a claim for which the STATE may seek indemnification, the STATE shall provide the CITY with prompt written notice of such claim and cooperate with the CITY in handling the claim. The CITY agrees to reimburse the STATE for its costs in assisting the CITY in the handling of the claim pursuant to Section 2.5. The CITY shall be entitled to control the handling of such claim and to defend or settle any such claim in its own discretion with counsel of its own choosing.

10.3 The CITY agrees that its obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees. For this purpose, the CITY, by mutual negotiation with the STATE, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance Provisions of Title 51, RCW.

10.4 This indemnification and waiver shall survive the termination of this Agreement.

10.5 In the event that either the CITY or the STATE deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in the superior court situated in Thurston County, Washington. Further, the Parties agree that each will be solely responsible for payment of its own attorneys fees, witness fees, and costs.

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

**CITY OF MARYSVILLE**

**WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**

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

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

Dave McCormick, P. E.  
Maintenance & Operations Asst. Regional  
Administrator NWR

Date: \_\_\_\_\_

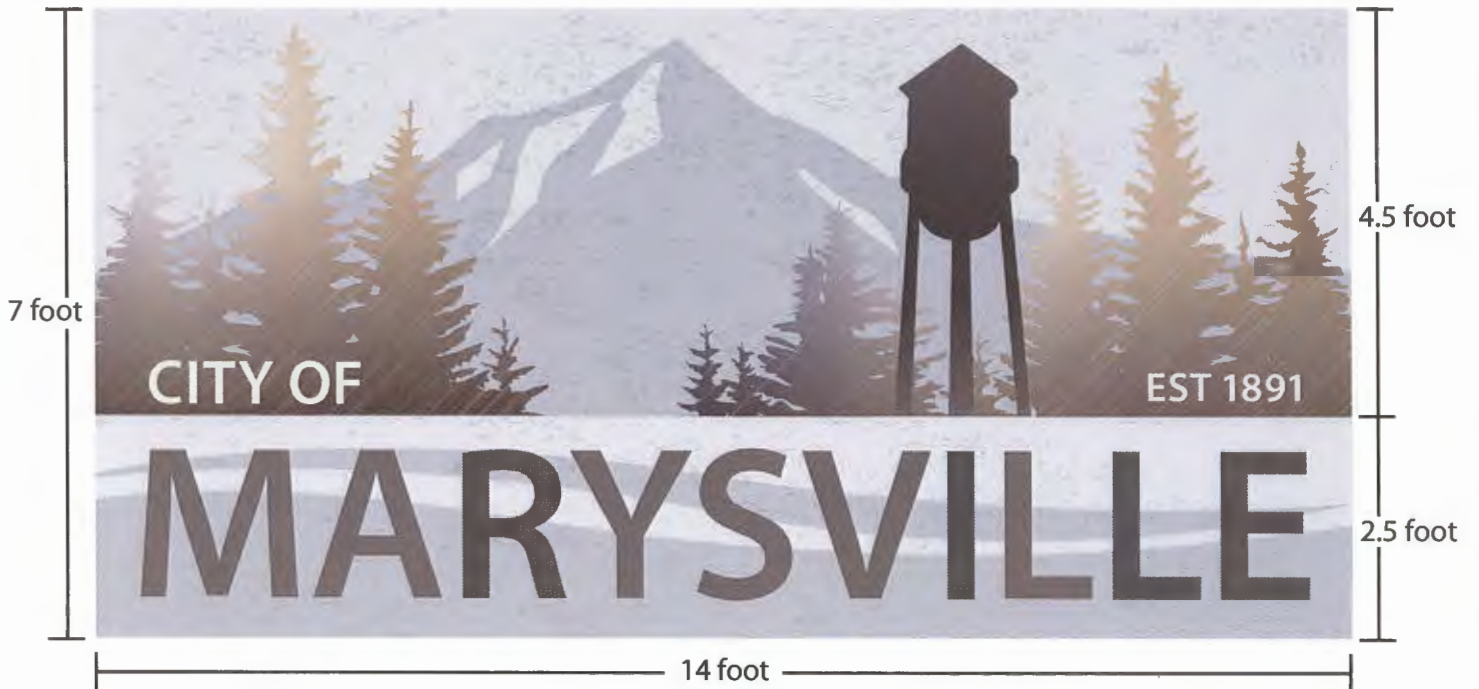
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**APPROVED AS TO FORM**

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

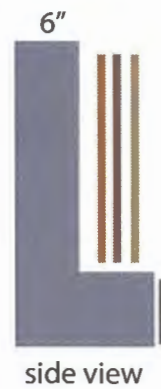
Ann E. Salay, Assistant Attorney General

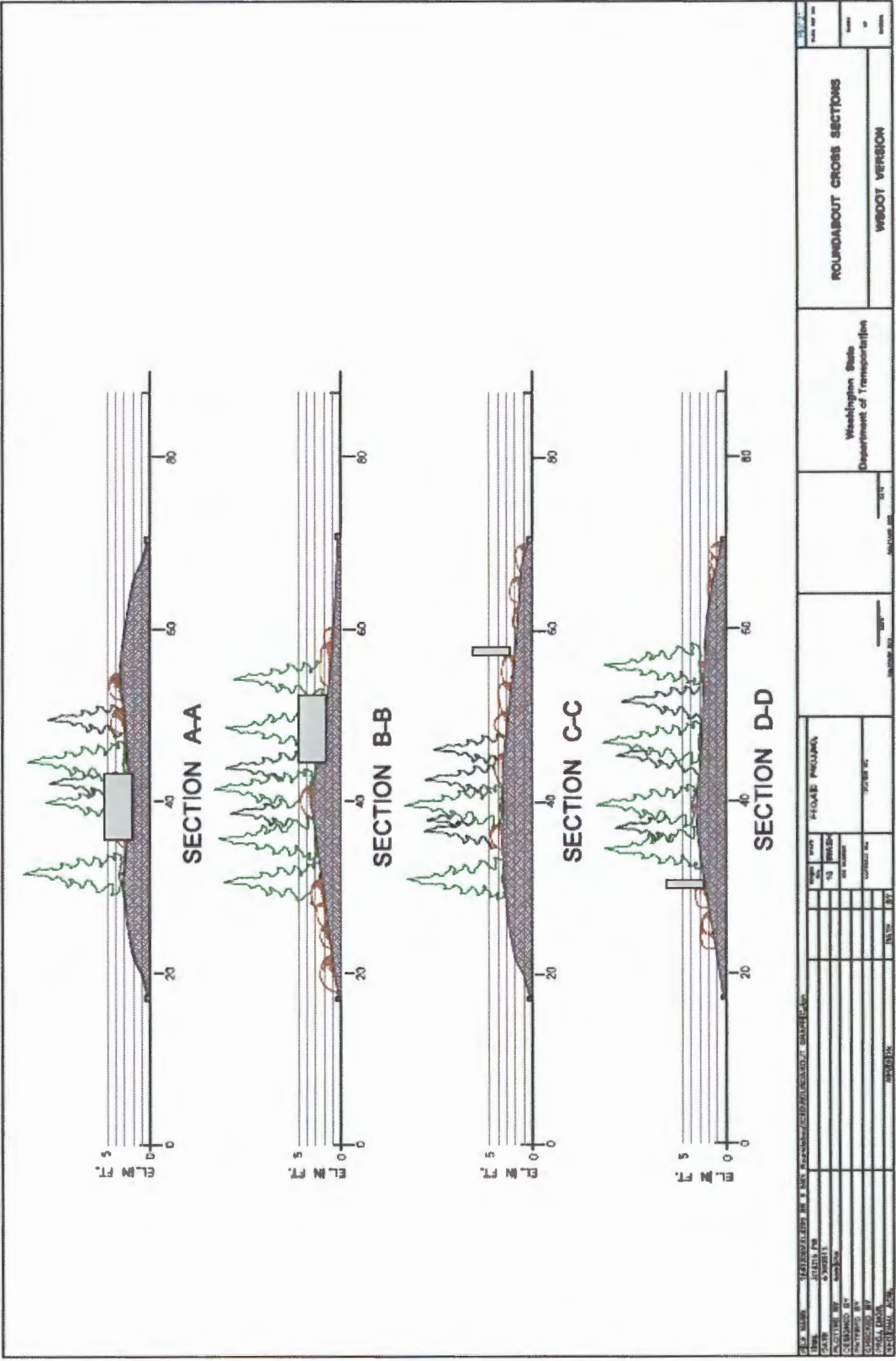
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Concrete Slab - flat or curved (*designed at 14x7 feet*):

I envision this as an L shaped piece of concrete. The mountain and river would be cut/sculpted out of the concrete. A variety of metals could be used for tree lines, water tower and text. A copper product on the trees would eventually develop a greenish patina.





STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION WASHINGTON STATE DEPARTMENT OF TRANSPORTATION		ROUNDABOUT CROSS SECTIONS WSDOT VERSION	
PROJECT NO. _____ SHEET NO. _____ DATE _____ DRAWN BY _____ CHECKED BY _____ DESIGNED BY _____ SCALE _____		FILED PROJECT NO. _____ DATE _____ COUNTY NO. _____ DIST. _____ SHEET NO. _____	