

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: March 23, 2015

AGENDA ITEM: Agreement for Professional Services Snohomish County Hotel Motel Funding Agreement	
PREPARED BY: Jim Ballew	DIRECTOR APPROVAL:
DEPARTMENT: Parks and Recreation	
ATTACHMENTS: Professional Services Agreement	
BUDGET CODE:	AMOUNT: \$10,000.00
SUMMARY:	

The City had applied for grant funding in support for the SR9 Gateway project from the Snohomish County Lodging Tax, Hotel/Motel funds (LTAC) program in 2014 for supporting funds. The City's project was awarded reimbursement funds in the amount of \$10,000 for the project.

The attached Agreement represents the terms and conditions for eligible costs associated with the installation of a new Gateway Sign within the Round A Bout (RAB) at the intersection of SR9 and 84th Street NE.

RECOMMENDED ACTION: Staff recommends the City Council consider authorizing the Mayor to sign the Professional Services Agreement with Snohomish County Economic Development Division for reimbursement of eligible costs not to exceed \$10,000 associated with the SR 9 Gateway Sign Project.
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CONSULTANT: City of Marysville
CONTACT PERSON: Jim Ballew
ADDRESS: 1049 State Ave
Marysville, WA 98270
TELEPHONE/FAX NUMBER: (360) 363-8400 /
COUNTY DEPT: Executive
DEPT. CONTACT PERSON: Jessica Voelker
TELEPHONE/FAX NUMBER: (425) 388-3139/(425) 388-3434
PROJECT: 2015 Gateway Project
AMOUNT: \$10,000.00
FUND SOURCE: 116 501014105205
CONTRACT DURATION: Contract execution through Dec. 31, 2015

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (the "Agreement") is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County"), and City of Marysville, a Washington municipality (the "Contractor").

Recitals

WHEREAS, by Section 1 of Resolution No. 79-335, adopted November 5, 1979 (and codified as SCC 4.40.010), the legislative body of the County levied a special excise tax on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property; and

WHEREAS, by Section 1 of Resolution No. 79-335, as subsequently amended (and codified as SCC 4.40.050(1)), the legislative body of the County created a fund known as the "hotel/motel tax fund"; and

WHEREAS, by Section 2 of Ordinance No. 87-062, adopted August 12, 1987 (codified as SCC 4.40.060), the County Council specified that the hotel-motel tax fund shall be used to support projects or purposes authorized under chapter 67.28 RCW; and

WHEREAS, chapter 67.28 RCW permits the distribution of money from the hotel-motel

HOTEL-MOTEL TAX FUND AGREEMENT
WITH THE CITY OF MARYSVILLE

tax fund for tourism promotion, defined by RCW 67.28.180(2) (h)(ii) as “activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events”; and

WHEREAS, by Section 4 of Ordinance No. 87-062 (codified as SCC 4.40.070), the County Council established an application and selection process for projects to be funded from the hotel-motel tax fund; and

WHEREAS, pursuant to the procedures established by SCC 4.40.070, the County received applications for funding assistance from various eligible public and nonprofit entities in response to a public solicitation for such applications; and

WHEREAS, the Snohomish County Lodging Tax Advisory Board evaluated the applications for eligibility and recommended funding levels for the projects, consistent with provisions of chapter 67.28 RCW; and

WHEREAS, by, Motion No. 14-455, passed on January 21, 2015, the County Council authorized 2015 hotel-motel tax funding of the projects as set forth therein (or as subsequently amended by the Council) and authorized the County Executive to execute the necessary contracts.

NOW, THEREFORE, in consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Purpose of Agreement; Scope of Services. The purpose of this Agreement is to establish the parameters for reimbursing City of Marysville in the amount up to \$10,000 for eligible expenses of Contractor’s 2015 programming (the “Project”), as set forth in Schedule A. Schedule A is attached hereto and by this reference made part of this Agreement. Schedule C is the Contractor’s Project application; it is attached hereto and by this reference made part of this Agreement.

The Contractor will prepare and present status reports and other information regarding performance of the Agreement as the County may request.

2. Term of Agreement; Time of Performance. This Agreement shall be effective upon mutual execution (the “Effective Date”) and shall terminate on December 31, 2015. The Contractor shall complete its obligations required by this Agreement no later than December 31, 2015. The County’s obligations after December 31, 2015, are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law.

3. Compensation.

a. Reimbursement. The County will reimburse Contractor as set forth in Schedule B, which is attached hereto and by this reference made a part of this Agreement.

b. Overhead and Expenses. No claims for reimbursement of overhead or expenses will be allowed under this Agreement.

c. Invoices. Upon completion of Contractor's eligible expenses for the Project, the Contractor shall submit a properly executed invoice to the County indicating the amount of eligible expenses for reimbursement. The invoice shall include an itemization of all reimbursable expenses incurred by the Contractor, together with reasonable documentation substantiating such expenses, all in accordance with this Section 3 and Schedule A. Subject to Section 8 of this Agreement, the County will pay the invoice within thirty (30) calendar days of receipt.

d. Contract Maximum. Total reimbursable expenses under this Agreement, all fees and expenses included, shall not exceed \$10,000.

4. Independent Contractor. The Contractor agrees that it is not an agent, employee, or servant of the County. This Agreement neither constitutes nor creates an employer-employee relationship. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. The Contractor specifically has the right to direct and control Contractor's own activities in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance. Nothing in this Agreement shall be construed to render the parties partners or joint ventures.

The Contractor shall furnish, employ and have exclusive control of all persons to be engaged in performing the Contractor's obligations under this Agreement (the "Contractor personnel"), and shall prescribe and control the means and methods of performing such obligations by providing adequate and proper supervision. Such Contractor personnel shall for all purposes be solely the employees or agents of the Contractor and shall not be deemed to be employees or agents of the County for any purposes whatsoever. With respect to Contractor personnel, the Contractor shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, including applicable contributions from Contractor personnel when required by law.

Because it is an independent contractor, the Contractor shall be responsible for all obligations relating to federal income tax, self-employment or FICA taxes and contributions, and all other so-called employer taxes and contributions including, but not limited to, industrial insurance (workers' compensation). The Contractor agrees to indemnify, defend and hold the County harmless from any and all claims, valid or otherwise, made to the County because of these obligations.

The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales,

income, or other form of taxes, fees, licenses, excises or payments required by any city, county, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in completion of the Project under this Agreement. The Contractor shall assume exclusive liability therefor, and shall meet all requirements thereunder, pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

5. Changes. No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.

6. County Contact Person. The assigned contact person (or project manager) for the County for this Agreement shall be:

Name: Jessica Voelker
Title: TPA Coordinator
Department: Executive Office
Telephone: (425) 388-3139
Email: Jessica.Voelker@snoco.org

7. County Review and Approval. If Contractor's Project includes the production of promotional materials, Contractor shall provide the County an advance copy of said promotional materials. If the content of the promotional material is objectionable to the County, the County, in its sole discretion, may determine whether to reimburse Contractor for the associated expenses.

8. Records and Access; Audit; Ineligible Expenditures. The Contractor shall maintain adequate records to support its invoices of reimbursable expenses. Said records shall be maintained for a period of seven (7) years after completion of this Agreement by the Contractor. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers and records of the Contractor that are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Expenditures under this Agreement, which are determined by audit to be ineligible for reimbursement and for which payment has been made to the Contractor, shall be refunded to the County by the Contractor.

9. Indemnification. To the maximum extent permitted by law the City shall indemnify and hold harmless the County its officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incidental to the Project. In addition, the Contractor shall assume the defense of the County its officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to the Project and shall pay all defense expenses, including reasonable attorneys' fees, expert fees and costs incurred by the County on account of such litigation or claims.

The above indemnification obligations shall include, but are not limited to, all claims against the County and, if applicable, the State by an employee or former employee of the Contractor or its subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects only the County and, if applicable, the State, under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

In the event that the County or, if applicable, the State incurs any judgment, award and/or cost including attorneys' fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this provision, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in an unfair trade practice.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Agreement.

10. Insurance Requirements. The Contractor shall procure by the time of execution of this Agreement, and maintain for the duration of this Agreement, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Project hereunder by the Contractor, its agents, representatives, or employees, and (ii) a current certificate of insurance.

a. General. Each insurance policy shall be written on an "occurrence" form.

By requiring the minimum insurance coverage set forth in this Section 12, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

b. No Limitation on Liability. The Contractor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

c. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage at least as broad as, and with limits no less than:

(i) General Liability: \$1,000,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$1,000,000.00 aggregate limit. CG 00 01 current edition.

d. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement must contain, or must be endorsed to contain, the following provisions:

(i) The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

11. County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Contractor shall comply with the substantive requirements of chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Contractor of the Contractor's compliance with the requirements of chapter 2.460 SCC. If the Contractor is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

12. Federal Non-discrimination. Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

13. Employment of County Employees. SCC 2.50.075, "Restrictions on future

employment of County employees,” imposes certain restrictions on the subsequent employment and compensation of County employees. The Contractor represents and warrants to the County that it does not at the time of execution of this Agreement, and that it shall not during the term of this Agreement, employ a former or current County employee in violation of SCC 2.50.075. For breach or violation of these representations and warranties, the County shall have the right to terminate this Agreement without liability.

14. Compliance with Other Laws. The Contractor shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.

15. Compliance with Grant Terms and Conditions. The Contractor shall comply with any and all conditions, terms and requirements of any federal, state or other grant, if any, that wholly or partially funds the Contractor’s work hereunder.

16. Prohibition of Contingency Fee Arrangements. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

17. Force Majeure. If either party is unable to perform any of its obligations under this Agreement as a direct result of an unforeseeable event beyond that party’s reasonable control, including but not limited to an act of war, act of nature (including but not limited to earthquake and flood), embargo, riot, sabotage, labor shortage or dispute (despite due diligence in obtaining the same), or governmental restriction imposed subsequent to execution of the Agreement (collectively, a “force majeure event”), the time for performance shall be extended by the number of days directly attributable to the force majeure event. Both parties agree to use their best efforts to minimize the effects of such failures or delays.

18. Suspension of Work. The County may, at any time, instruct the Contractor in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work or a notice from the County of breach or termination under Section 21 of this Agreement.

19. Non-Waiver of Breach; Termination.

a. The failure of the County to insist upon strict performance of any of the covenants or agreements contained in this Agreement, or to exercise any option conferred by this Agreement, in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

connection with the Contractor's performance under this Agreement. The Contractor may use such information solely for the purposes necessary to perform its obligations under this Agreement. The Contractor shall promptly give written notice to the County of any judicial proceeding seeking disclosure of such information.

22. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

23. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties. 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 of 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.

24. Complete Agreement. This Agreement constitutes the entire understanding of the parties. Any written or verbal agreements that are not set forth herein or incorporated herein by reference are expressly excluded.

25. 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.

Schedule A
Scope

CONTRACTOR: CITY OF MARYSVILLE
PROJECT: 2015 GATEWAY PROJECT

The Contractor will: (a) develop, manufacture and install one (1) fourteen (14) foot by seven (7) foot metal gateway structures to be placed at the north and south intersection of State Route HWY 9 and 88TH Ave. NE. for the Project. In addition,

- The Contractor shall work with the Snohomish County Tourism Bureau (the “Tourism Bureau”) to ensure that any published materials prepared with financial assistance from County funds are consistent with the County’s graphics standards as set forth in more detail in paragraph 2 below.
 - Any publications produced as a result of this Project shall prominently feature the following credit: MADE POSSIBLE IN PART BY ASSISTANCE FROM THE SNOHOMISH COUNTY HOTEL-MOTEL TAX FUND.
 - The Contractor will project the number of overnight visits the Project will generate and, as a condition to being funded in the future, report on the results. Alternatively, the Contractor can report on initiatives undertaken by it in concert with the Tourism Bureau to incorporate the funded Project in trip packaging which promotes overnight stays.
 - The Contractor will place on its website a link provided by the Tourism Bureau to the Washington Reservation Booking Engine and provide the “click-thru” data in its report accompanying its invoice for reimbursement.
 - If the Project will occur within a city or cities that collect their own lodging tax, the Contractor shall approach such city or cities for funding assistance for the Project. Prior to or concurrent with its first invoice to the County for this Project, the Contractor shall provide a written report to the County on the results of the Contractor’s approaches to that city or those cities. If such approaches were not made by the Contractor, the Contractor shall explain in detail in that report its reasons for not doing so. The provision of the report shall be a pre-condition for the County’s reimbursing the Contractor for services provided under this Agreement.
1. Through the auspices of the Tourism Bureau, the County pursues a long-range tourism development and marketing strategy. Part of that strategy is to foster the visual integration of published tourism materials in Snohomish County. For that purpose, the Tourism Bureau has developed a package of design guidelines which includes a logotype, a tag line and a family of colors. If any printed materials or print medium advertisements are produced as part of the Project that is the subject of this Agreement, the following requirement will apply: (i) The Contractor will coordinate design of printed materials produced under the Agreement with the Tourism Bureau with the goal of applying the design guidelines to printed materials produced hereunder. (ii) The Contractor will submit the proposed design to the County’s contact set forth in Section 7 of the Agreement for review and approval prior to printing the production run.
 2. To ensure that out-of-county visitors are attracted to the Project, the Contractor will direct

more than fifty percent (50%) of any promotional materials underwritten in whole or in part by County funds at recipients outside of Snohomish county. For written materials, this goal may be accomplished by mailing written materials out of the county and/or by placing appropriate written materials with the Tourism Bureau. At least fifty percent (50%) of any electronic advertising funded under this Agreement will be directed at audiences outside of Snohomish County.

Schedule B
Compensation

1. The Contractor will be reimbursed by the County for services provided and/or eligible expenses incurred in executing the Project pursuant to the Agreement in an amount not to exceed the Contract Maximum.

2. Expenses eligible for reimbursement under the Agreement are defined as those listed in the "COUNTY" column of the Project budget below. The Contractor shall submit an invoice to the County with itemized invoices from third parties for all eligible expenditures for which the Contractor seeks reimbursement. In-kind matching volunteer services shall be valued at a rate of \$22.00 per hour or as invoiced to the Contractor by independent third parties at a commercially reasonable rate that is customary for such work. In addition, if County funds are to be used to pay in whole or in part any printed materials, print advertising or broadcast medium advertising, the Contractor will submit with the Contractor's reimbursement request for associated costs incurred: three (3) copies of printed materials; one copy of each print advertisement as printed; and one copy of the text of each broadcast medium advertisement. The Contractor will not be reimbursed for any expenses incurred by it which provide direct promotional benefit to a specific private business entity. In order to ensure timely closeout of the Project, the Contractor shall submit its invoice to the County no later than thirty (30) calendar days after completion of the services authorized by this Agreement and, in any event, no later than December 31, 2015. The Contractor's invoice shall be accompanied by a report summarizing the Project and how funds provided for the Project under this Agreement have enhanced tourism in Snohomish County. In no event shall the Contractor's invoice be paid by the County if it is submitted after December 31, 2015, or if it is not accompanied by the required report.

PROJECT BUDGET

ITEM	COUNTY	MATCH CASH	MATCH IN-KIND
1. Construction / Installation	\$10,000	\$10,900	
Total	\$10,000	\$10,900	

Upon request of the Contractor and approval by the County Executive as provided in SCC 4.40.065(11), the Contractor may be authorized to shift funds within the items defined in the budget shown above subject to the following conditions:

1. No funds may be shifted without **prior** written authorization from the County's contact set forth in Section 7 of the Agreement. Authorization to shift funds must be sought and approved **prior** to anticipated need.

2. Funds shifted shall aggregate no more than twenty percent (20%) of the total allocation

amount.

3. Funds shifted shall be within the original allocation. Authorization to shift funds IS NOT authorization to exceed the original amount of the allocation. In no event shall payments by the County under the Agreement exceed the Contract Maximum.
4. Funds may only be shifted among items listed in the original budget. No new budget items or expenditure categories may be funded without an amendment to this Agreement.

Schedule C
Contractor's Project Application