

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: October 14, 2019

AGENDA ITEM:	
Right-of-Way Encroachment Agreement	
PREPARED BY:	DIRECTOR APPROVAL:
Burton Eggertsen	
DEPARTMENT:	
Legal/Public Works	
ATTACHMENTS:	
Proposed Right-of-Way Encroachment Agreement	
BUDGET CODE:	AMOUNT:
SUMMARY:	

The City will be acquiring a portion of 70 State Street, Marysville WA 98270, which is owned by Synergy Services Group, LLC. The portion of property is being acquired as part of the 1st Street Bypass Project, and it will subsequently be dedicated as right-of-way.

Synergy has a sign located on the portion of property that the City will acquire. The proposed right-of-way encroachment agreement will allow Synergy to use and maintain the sign in its present location, which will be adjacent to the future sidewalk.

RECOMMENDED ACTION: Staff recommends Council consider authorizing the Mayor to sign the Right-of-Way Encroachment Agreement.

PROPOSED MOTION: I move to authorize the Mayor to execute the Right-of-Way Encroachment Agreement with Synergy Services Group, LLC.

RIGHT OF WAY ENCROACHMENT AGREEMENT

This Right of Way Encroachment Agreement (the “Agreement”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a municipal corporation of the State of Washington (the “City”) and Synergy Services Group, LLC (the “Grantee”).

WHEREAS, the Grantee is the owner of the property situated in Snohomish county commonly known as 70 State Street, Marysville WA 98270, the legal description of which is attached as **Exhibit A** (“Grantee’s Property”); and

WHEREAS, the City, in agreement with the Grantee, has acquired a portion of Grantee’s property as part of the 1st Street Bypass Project, as shown in **Exhibit B** (the “Subject Property”); and

WHEREAS, the Subject Property will be dedicated as right-of-way; and

WHEREAS, prior to transfer to the City, the Grantee constructed a freestanding sign on the Subject Property advertising the existence of Grantee’s business as shown in **Exhibit C** (the “Sign”); and

WHEREAS, after dedication and construction of the 1st Street Bypass, the freestanding sign will be in the right-of way, and adjacent to a sidewalk; and

WHEREAS, the parties wish to allow the Sign to remain on the Subject Property and encroach upon the right-of-way according to the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Permission Granted. The City, in consideration of the rights and obligations contained herein, hereby grants permission to the Grantee to encroach on the right-of-way for the purposes of using and maintaining the Sign. The rights and obligations contained herein are solely for the purpose of permitting Grantee to access, use, maintain, and repair the Sign for the benefit of Grantee’s Property, and does not grant any other rights relating to the Subject Property.

2. Use, Maintenance, Repairs. Grantee shall be responsible of all maintenance and repair of the Sign. All access, use, maintenance, and repairs of the Sign shall be performed in compliance with the terms of this Agreement and all applicable federal, state, and local laws, rules, ordinances and code provisions, and Grantee will obtain a Right-Of-Way permit as required by the City in accordance with the Marysville Municipal Code. In conducting any repair or maintenance work, the Grantee will comply with any directions provided by the City of Marysville Community Development Department.

3. Emergency Access by the City. In the event the City determines that the Sign requires emergency repairs, it will notify the Grantee of the need of such repairs. In the event that the City is unable to contact the Grantee, if the Grantee does not timely make such repairs, or if the City

determines, in its sole discretion, that emergency repairs need to be conducted immediately, it may access the Sign and perform such repairs. All costs the City incurs in performing emergency repairs to the Sign will be the responsibility of the Grantee, and the Grantee will reimburse the City for the same.

4. Further Construction Prohibited. The Grantee will not modify or enlarge the Sign so as to increase its encroachment in, under, on, or above the Subject Property or right of way, and the Grantee will not place any other encroachments in, under, on, or above the same.

5. City's Use of Subject Property. The City may enter and utilize the Subject Property at any time and for any purpose, including but not limited to installing, repairing, replacing, or maintaining improvements in the Subject Property, the right-of-way, or the adjacent sidewalk.

6. Indemnification. Grantee 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 in connection with the access, use, repair, or maintenance of the Sign, or arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

7. Notices. Except for notice for emergency access to the Sign as described in Section 3, which may be made telephonically or by electronic mail, any notice or other communication required or permitted under this Agreement will be in writing and will be deemed to have been made either (1) when delivered personally to the party to whom it is directed (or any officer or agent of such party), or (2) upon being deposited in the United States' mail, postage prepaid, return receipt requested, and properly addressed to the party. A communication will be deemed to be properly addressed if sent to the following addresses:

a. Grantee:

Phone:

Email:

b. City: Public Works Department

City of Marysville

80 Columbia Avenue

Marysville, WA 98270

Phone: 360-363-8100

Email:

8. Governing Law. This Agreement will be governed by the laws of the State of Washington, with venue in Snohomish County.

9. Runs with the Land; Successors and Assigns. The rights and obligations contained herein shall run with the land and shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto

10. Severability. Any provision of this Agreement which proves to be invalid, void or illegal will in no way affect, impair or invalidate any other provision of this Agreement, and the remaining provisions will nevertheless remain in full force and effect.

11. No Waiver. Failure of either party at any time to require performance of any provision of this Agreement will not limit such party's right to enforce the provision, nor will any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of the provision or a waiver of the provision itself.

12. General. This Agreement (including the attached exhibits): (i) represents the entire understanding of the parties with respect to the subject matter covered; (ii) supersedes all prior and contemporaneous oral understandings with respect to such subject matter; (iii) the captions or headings provided in this Agreement are for convenience only and will not be deemed to be a part of this Agreement; (iv) the recitals are incorporated into and shall be considered a part of this Agreement; (v) the attached Exhibits are incorporated into and shall be considered a part of this Agreement; and (vi) by signing below, each individual signatory certifies that he/she is a person duly qualified and authorized to bind the respective parties to this Agreement.

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

[SIGNATURES ON FOLLOWING PAGE]

SYNERGY SERVICES GROUP, LLC:

By:

Date

Its:

CITY OF MARYSVILLE:

Jon Nehring, Mayor

Date

Attest/Authenticated:

Tina Brock, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

STATE OF _____)
)ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Mayor Jon Nehring is the person who appeared before me, to me known to be the Mayor of the City of Marysville, and he acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated this ____ day of _____, 20__

(Notary Signature)

(Print Name)

NOTARY PUBLIC in and for the State of Washington
Residing at (city): _____
My commission expires: _____

STATE OF _____)
)ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person(s) acknowledged that he/she signed this instrument, on oath stated that he/she is authorized to execute the instrument and acknowledged it as the _____ of Synergy Services Group, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated this ____ day of _____, 20__

(Notary Signature)

(Print Name)

NOTARY PUBLIC in and for the State of Washington
Residing at (city): _____
My commission expires: _____

EXHIBIT A
(GRANTEE'S PROPERTY)

Legal Description

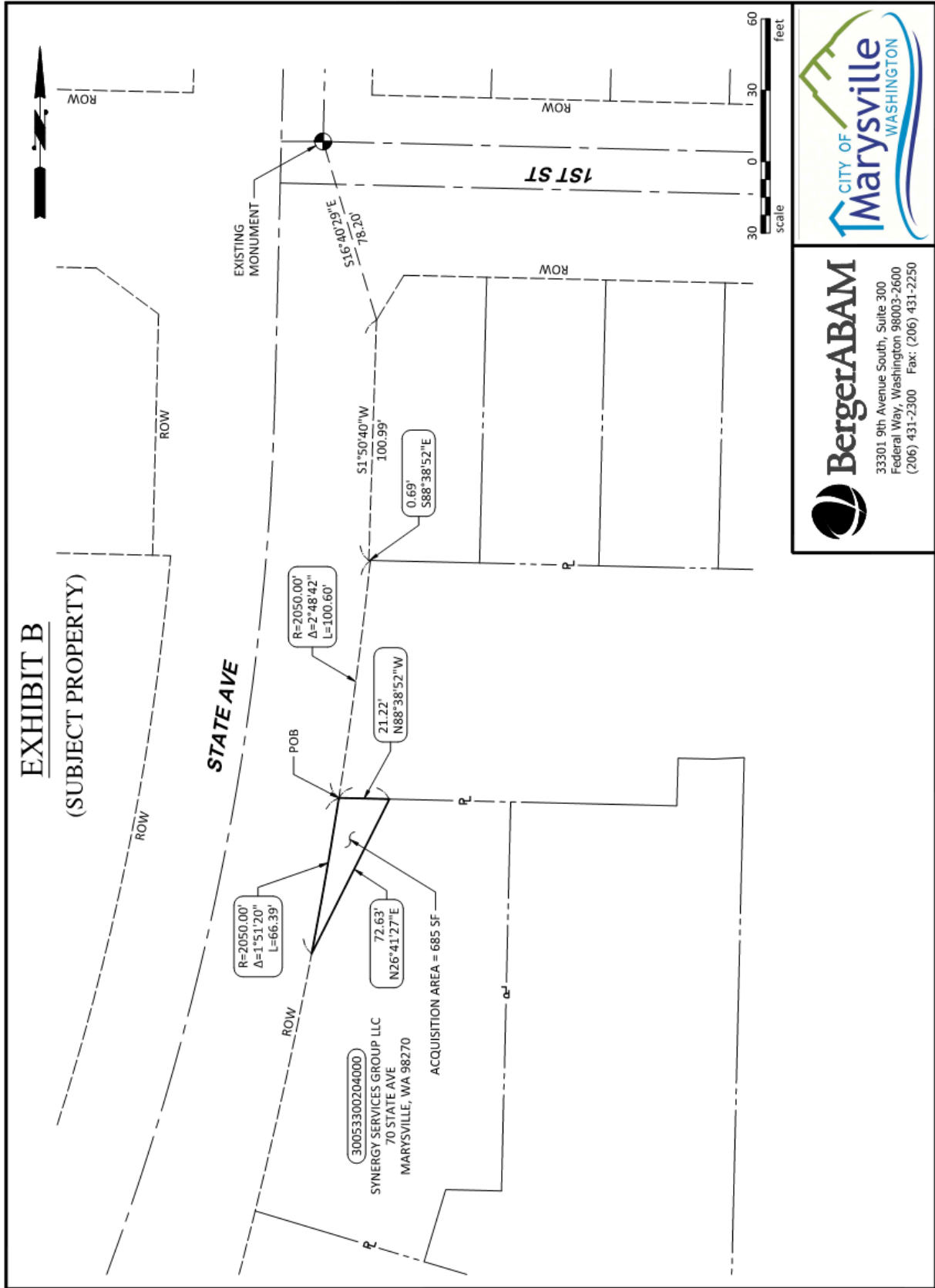
For APN/Parcel ID(s): 300533-002-040-00

LOT 2 OF FUNSTON COMMERCIAL PLAZA CITY OF MARYSVILLE BINDING SITE PLAT FILE NO. PA 04005, RECORDED UNDER RECORDING NO. 200409295124, BEING A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 30 NORTH, RANGE 5 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON;

EXCEPT THE PORTION CONVEYED TO THE STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION FOR ACCESS PURPOSES AS RECORDED IN DEED RECORDED UNDER RECORDING NO. 200908190793.

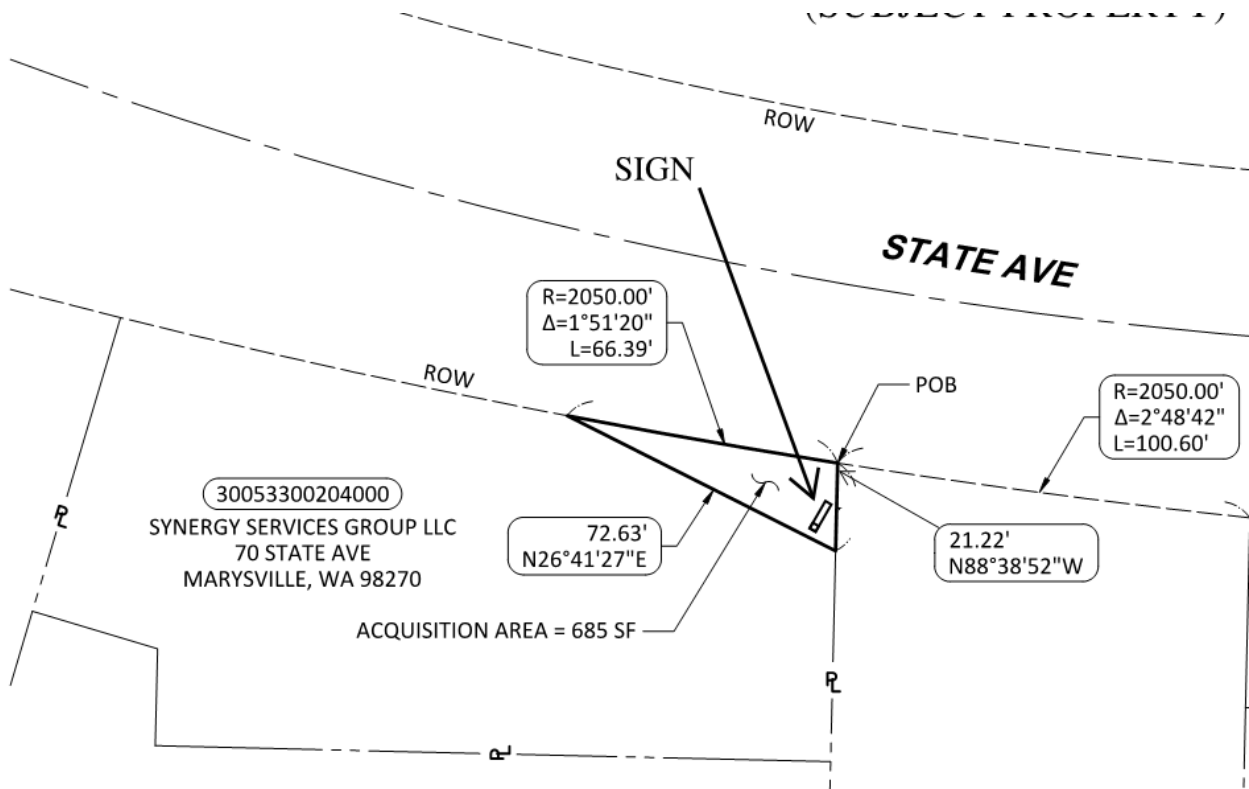
SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

EXHIBIT B
(SUBJECT PROPERTY)



BergerABAM
 33301 9th Avenue South, Suite 300
 Federal Way, Washington 98003-2600
 (206) 431-2300 Fax: (206) 431-2250

EXHIBIT C
(SIGN)



SIGN – LOOKING SW



SIGN – LOOKING NE