

**AGREEMENT FOR SIGN MAINTENANCE – SR 9 DIRECTIONAL SIGNS
CITY OF ARLINGTON
GMB 1092**

This Agreement is made and entered into between the Washington State Department of Transportation, hereinafter called the “STATE,” and the City of Arlington, 238 North Olympic, Arlington WA, hereinafter called the “CITY.”

WHEREAS, the STATE will install two directional signs, fabricated and paid for by the CITY, hereinafter referred to as the “Signs,” on SR 9 limited access right of way, at MP 26.79 (west side of road) and MP 27.14 (east side of road) for the CITY, and the CITY will provide the STATE with all materials for the installation, and

WHEREAS, the STATE, with the CITY’s concurrence, has setup a JA (Miscellaneous Reimbursable) Work Order Account (JA9399) to accept payment from the CITY to the STATE for the installation of the signs, and

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

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 replacement, repairs, and any other incidentals for the Signs being installed, as shown on Exhibit A.
- 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, 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 Signs.
 - 1.3.1 If the CITY, in its sole discretion, determines that it is necessary to replace or modify the Signs, any replacement or modification shall require prior written approval by the STATE.

- 1.3.2 In the event a state highway project requires removal or relocation, 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. 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 actual direct and related indirect costs incurred by the STATE in accordance with Section 2.5.

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 limited access 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.
- 1.4.3 The CITY agrees to contact Seattle Radio at (206)440-4490 and Bonnie Nau or the current Washington State Department of Transportation (WSDOT) Construction Traffic Manager, at (206)440-4471 if and when Traffic Control is placed on the SR 9 right of way.

1.5 Third Party Damage

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

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 actual direct and related indirect costs incurred by the STATE 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, at its sole cost and expense, the identified work within thirty (30) calendar days after receipt of said notification.

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 To the extent authorized by law, 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 limited access 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 sole negligence of the STATE; provided that, if such claims, suits, or actions result from concurrent negligence of (a) the STATE, its employees, authorized agents, or contractors, and (b) the CITY, its employees, authorized agents, or contractors, or involves those actions covered by RCW 4.24.115, 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.

11. PAYMENT FOR STATE INSTALLATION OF CITY SIGNS

11.1 The STATE shall provide detailed invoices to the CITY for the installation of the Signs, and the CITY agrees to make payment within thirty (30) days from receipt of the invoice.

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

CITY OF ARLINGTON

By: Barbara Tolbert
Barbara Tolbert, Mayor

Date: 12/1/2016

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: Chris J. Johnson for Chris J. Johnson, M&O Manager
Dave McCormick, P. E.
Maintenance & Operations Asst. Regional Administrator NWR

Date: 11-3-16

APPROVED AS TO FORM

By: Ann E. Salay
Ann E. Salay, Senior Counsel

Date: 10-31-16