


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: July 27, 2015

AGENDA ITEM: Agreement between Tulalip Tribes and the City of Marysville for Embankment Fill Construction	
PREPARED BY: Jeff Laycock, Project Manager	DIRECTOR APPROVAL: 
DEPARTMENT: Engineering	
ATTACHMENTS: Vicinity Map, Agreement	
BUDGET CODE: N/A	AMOUNT: N/A

SUMMARY:

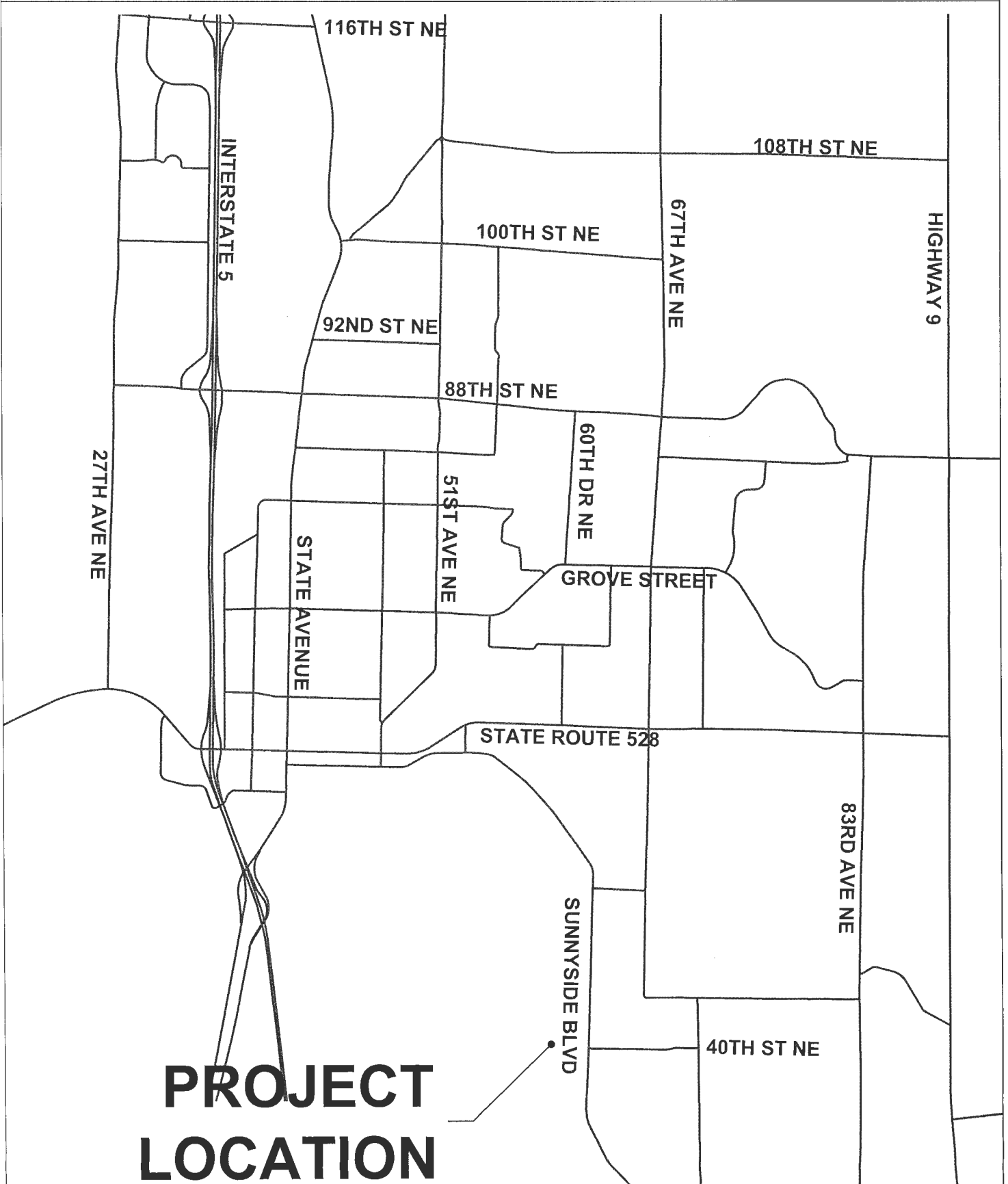
At the May 11, 2015 City Council meeting, Council approved a contract to import and stockpile approximately 4,500 cubic yards of fill material associated with future improvements to the Ebey Waterfront Trail. This material will now be used to construct an embankment prior to the breach associated with the Qwuloolt Estuary Restoration project.

The work to construct the embankment will be performed by the Tulalip Tribe's contractor at an estimated cost of \$80,481.81. In carrying out the project, the Tribes have done extensive planning, coordination with state and federal authorities, obtained permission from affected private landowners, obtained required permits, and otherwise engaged in large scale efforts to complete the Project. It would not be cost-effective or an efficient use of resources for the City to duplicate many of these efforts in order to perform the embankment work. The City will reimburse the Tulalip Tribe's for all costs associated with this work. An agreement with the Tulalip Tribes is required in order for the City to reimburse the Tribe for this work.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign and execute the Agreement with the Tulalip Tribes.

VICINITY MAP



**AGREEMENT FOR EMBANKMENT FILL PROJECT AND REIMBURSEMENT FOR COSTS
OF FILL PROJECT**

RECITALS

The City of Marysville (the City), a Washington municipal corporation, and the Tulalip Tribes (the Tribes), a federally recognized Indian Tribe, enter into this agreement on the ___ day of _____, 2015. This agreement is part of the parties' ongoing cooperation in conjunction with the Tribes' Qwuloolt Estuary Restoration Project (the Project). The Project is intended to restore natural influences of the Snohomish River and Salish Sea tides to an area that was cut off from these influences by levees. Both parties anticipate benefits from the Project including environmental restoration, increased native flora and fauna, and recreational and educational opportunities for the public.

The Qwuloolt Estuary is located within the Snohomish River floodplain, approximately three miles upstream from its outlet to Puget Sound and within Marysville city limits. Historically, the area was tidal marsh and forest scrub-shrub habitat, interlaced by tidal channels, mudflats and streams. The Project area is currently cut off from the natural influences of the Snohomish River and Salish Sea tides by levees, drained by ditches instead of stream channels, and characterized by a monoculture of invasive reed canary grass instead of native shrubs and grasses. The main feature of the restoration plan is a reconnection of channel and floodplain processes through a significant breach in the Ebey Slough north levee.

The City intends to construct a trail – the Ebey Waterfront - Harbor Village Trail - along the Project to provide public educational and recreational opportunities and to highlight the natural restoration that will occur upon completion of the Project. The Tribes and the City agree that providing public access through a trail will serve the objectives of both parties.

Work on certain sections of the trail must occur prior to the breach of the levee. One area where work must occur prior to breach is over land currently owned by the City and Tribes. This portion of the trail work is known as the Embankment Fill Project (also referred to as the Harbor Village Trail Extension Fill Placement and Grading) and is part of the larger Project that the Tribes put out to competitive bidding. The Tribes began advertising for bids on June 24, 2015, and the contract was awarded to Reece Construction Company on June 30, 2015.

The parties agreed that the City would haul sufficient fill material to the site and the Tribes' contractor would complete filling and grading in coordination with the City. The fill placement and grading portion of the work is described in Exhibit A of this agreement.

The Tribes agreed to have the work completed by its contractor in order to facilitate completion of the Project and to facilitate achieving the parties common objectives in relation to the Project. The City agreed to reimburse the Tribes for the cost of the work performed by the Tribes' contractor on the Fill Placement and Grading described in Exhibit A.

In carrying out the Project, the Tribes have done extensive planning, coordination with state and federal authorities, obtained permission from affected private landowners, obtained required permits, and otherwise engaged in large scale efforts to complete the Project. It would not be cost-effective or an

efficient use of resources for the City to duplicate many of these efforts in order to perform the fill work necessary to the Harbor Village Trail Extension Fill Placement and Grading portion of the Project. Both parties benefit from an integrated approach of having the Tribes perform the work and the City reimburse the Tribes for this work.

AGREEMENT

1. Purpose. The purpose of this Agreement is to cause the completion of the Embankment Fill Project in an efficient and cost effective manner.
2. Tribes to Perform Work. The Tribes or its contractor will perform the Harbor Village Trail Extension Fill Placement and Grading work described in Exhibit A (also referred to as the Embankment Fill Project). All necessary permits will be obtained for the work and the work will be performed in conformance with applicable laws. The Tribes are solely responsible for ensuring that its contractor completes the Embankment Fill Project and pays all subcontractors, workers, and suppliers in conformance with applicable laws. The Tribes are solely responsible for any unauthorized or defective work performed by its contractor.
3. Embankment Fill Project Estimated Cost; Payment for Project Cost. The estimated cost of the Embankment Fill project is \$80,481.81.
4. Reimbursement Procedure. Upon acceptance of the Embankment Fill Project, the City will reimburse the Tribes for the actual costs of the Embankment Fill Project up to \$80,481.81, as evidenced by invoices submitted to the Tribes by its contractor. Payment should be made by the City within thirty (30) days of acceptance or submission of invoices whichever is later. If during construction, the Tribes determine that additional or changed work is required to complete the Embankment Fill Project, the Tribes shall promptly notify the City and obtain written approval from the City for such work.
5. Ebey Waterfront – Harbor Village Trail Ownership, Maintenance, and Operation. The Tribes shall notify the City upon completion of the Embankment Fill Project. Within two (2) business days of a City request, the Tribes shall provide the City with all requested reports and records regarding construction, inspection, and completion of the Embankment Fill Project. The parties will work diligently and in good faith to resolve any completion items for the Embankment Fill Project. Upon resolution of such items, the City shall notify the Tribes of the City's acceptance of the Embankment Fill Project. Upon acceptance of the Embankment Fill Project by the City, the City shall be responsible for the maintenance and operation of the Ebey Waterfront - Harbor Village Trail. The City shall not be barred by acceptance from requiring the Tribes to remove, replace, repair, or dispose of unauthorized or defective work, material, or equipment or from recovering damages for the same. The Tribes retain all rights as to its contractor.
6. No Joint Venture. No joint venture or partnership if formed as a result of this Agreement. No officers, officials, employees, or agents of one party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other party.
7. No Third Party Beneficiary. This Agreement is solely for the benefit of the parties and gives no right to any other party or person.

8. Indemnification. Each party assumes responsibility and liability for the acts and omissions of its employees, officers, and agents in the performance of this Agreement or in enjoying the benefits of this Agreement. In cases of joint liability, liability shall be apportioned between the parties or other defendants in accordance with the laws of the State of Washington.

9. Legal Relations/Dispute Resolution. The Tribes, its contractors and subcontractors shall comply with all federal, state, and local laws and ordinances applicable to the Harbor Village Trail Extension Fill Placement and Grading project.

The parties agree that any and all disputes, claims, or controversies arising out of or relating to the Embankment Fill Project shall be resolved by mediation with a mediator jointly selected by the parties. If the parties are unable to reach a negotiated resolution through mediation, then the parties agree to submit the same to JAMS, or its successor, for final and binding arbitration.

Any dispute, claim or controversy that cannot be resolved through mediation that arises out of this Agreement, shall be determined by arbitration before a sole arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. The arbitrator's decision is final. The costs of mediation and/or arbitration shall be shared equally and each party shall be responsible for its own legal fees. The Arbitration decision shall be final and may be enforced by the Federal District Court.

10. Limited Waiver of Sovereign Immunity: The Tribes neither waives, limits nor modifies its sovereign immunity from any lawsuit, except as expressly provided in this Dispute Resolution / Mediation / Arbitration Section. The Tribes hereby expressly and irrevocably waives its sovereign immunity (and any defense based thereon) for arbitration of claims arising out of or related to this Agreement but only pursuant to the provisions of this Dispute Resolution / Mediation / Arbitration section, and only for judicial proceedings in Federal Court for the purposes of compelling mediation or arbitration of a Claim, confirming an arbitration award or collecting sums due and owing pursuant to, and otherwise enforcing any award or judgment by the arbitrator(s). The Tribes hereby consents to and submits itself to the jurisdiction of any arbitration proceeding convened pursuant to the terms of this Agreement. This limited waiver of sovereign immunity is solely for the benefit of the City, and the Tribes, by granting this limited waiver to City, does not otherwise waive its sovereign immunity.

11. Notices.

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

City of Marysville

ATTN: Gloria Hirashima, Chief Administrative Officer

1049 State Avenue

Marysville, WA 98270

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

TULALIP TRIBES OF WASHINGTON

Chairman

6406 Marine Drive

Tulalip WA

98271

Receipt of any notice shall be deemed effective on the date personally served, or three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

12. Counterparts. This Agreement may be executed in several identical counterparts, each of which shall be deemed to be an original copy, all of which together shall constitute one Agreement, binding upon all parties hereto, notwithstanding that all the parties shall not have signed the same counterparts.

13. Entire Agreement. This Agreement contains the entire written agreement of the parties and supersedes all prior discussions. This Agreement may be amended in only in writing, signed by both parties.

14. Term. This Agreement shall be effective on the date both parties have executed this Agreement and shall be effective until completion of the Embankment Fill Project and reimbursement of the Tribes by the City. Otherwise, this Agreement will terminate only upon the written mutual consent of the parties or by court order.

15. Interlocal Agreement Provisions. No separate legal or administrative entity is created by this Agreement. To the extent necessary, this Agreement shall be administered jointly by the City's Chief Administrative Officer and the Tribes' Chairman or their designees.

16. 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. Severability. If any section or part of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such action shall not affect the validity or enforceability of any other section or part of this Agreement.

18. Incorporation by Reference. The recitals set forth above are incorporated in full by this reference.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives.

DATED this _____ day of _____, 2015.

CITY OF MARYSVILLE

By _____

JON NEHRING, Mayor

TULALIP TRIBES OF WASHINGTON

By _____

MELVIN SHELDON JR., Chairman

STATE OF WASHINGTON)

)ss.

COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that JON NEHRING is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF MARYSVILLE to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2012.

(Legibly print name of notary)

NOTARY PUBLIC in and for the State of

Washington, residing at _____

My commission expires _____

STATE OF WASHINGTON)

)ss.

COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Melvin Sheldon Jr. is the person who appeared before me, and said person acknowledged that _____ signed this instrument, on oath stated that _____ was authorized to execute the instrument and acknowledged it as the Chairman of the TULALIP TRIBES OF WASHINGTON to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2012.

(Legibly print name of notary)

NOTARY PUBLIC in and for the State of

Washington, residing at _____

My commission expires _____

EXHIBIT A

Harborview Village Trail Extension Fill Placement

The City of Marysville has requested that embankment material be placed on Tulalip Tribes and Marysville Property at the southern most end of the existing trail extending the it south 800 feet. The work associated with this action includes hauling, placing and compacting approximately 4,500 cubic yards of material furnished by the City of Marysville and located as a stockpile within the project vicinity. Embankment placement would occur as shown on design sheets 11- 16 of 16 [sheets provided by the City of Marysville numbered 1 - 6 of 6 in packet]. The work also consists of clearing and grubbing, and the coordination with the City of Marysville during construction to reconstruct two stormwater outfalls within the embankment area. Approximately 1,500 cubic yards of onsite select fill material, including debris from clearing and grubbing will be used as channel fill. The remaining 3,000 cubic yards of onsite structural fill will be used for embankment construction.”

It is at the discretion of the contractor to provide the means and methods to complete these actions. Cost will be based on the standards in the Schedule of Costs and shall include, materials, equipment, labor, delivery, installation, overhead, profit and any other cost or expense, in connection with or incidental to, the performance of this action.

All site preparation work identified in all three parts to this project must also abide by standard TESC (Temporary Erosion and Sediment Control) best management practices the intent of which is to control unintended water quality impacts (described in the Stormwater Pollution Prevention Plan). Measures may include, but not be limited to, sediment/silt fences or coir sediment control devices along the perimeter of project area, sloping and compacting material.