


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 11/27/17

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| AGENDA ITEM: | |
| Cost Sharing Partnership Between Tulalip Tribes and The City of Marysville Regarding Wetland Monitoring | |
| PREPARED BY: | DIRECTOR APPROVAL: |
| Brooke Ensor |  |
| DEPARTMENT: | |
| Public Works | |
| ATTACHMENTS: | |
| Cost Sharing Partnership | |
| BUDGET CODE: | AMOUNT: |
| 40145040 541000 | Not to exceed \$15,000.00 annually |
| SUMMARY: The City of Marysville will enter into a cost sharing partnership with the Tulalip Tribes for Wetland Monitoring on City owned properties within the Qwuloolt Restoration Area. Wetland monitoring is a condition stipulated by the Department of Ecology and the US Army Corps of Engineers. Monitoring reports must be submitted in order to receive advance wetland mitigation credits from City owned property within the Qwuloolt Restoration Area. The Tulalip Tribes is already conducting wetland monitoring so this partnership prevents a duplication of effort. | |

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| <p>RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to sign the Cost Sharing Partnership Between Tulalip Tribes and The City of Marysville Regarding Wetland Monitoring</p> |
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City of Marysville
80 Columbia Ave
Marysville, WA 98270

Tulalip Tribes of Washington
6406 Marine Drive
Tulalip, WA 98271

**COST SHARING PARTNERSHIP BETWEEN TULALIP TRIBES AND THE CITY OF MARYSVILLE
REGARDING WETLAND MONITORING**

GRANTOR: Tulalip Tribes of Washington State

GRANTEE: City of Marysville, Washington

Tulalip Tribes of Washington Contract No: _____

COST SHARING PARTNERSHIP BETWEEN TULALIP TRIBES AND THE CITY OF MARYSVILLE REGARDING WETLAND MONITORING

WHEREAS, pursuant to the powers accorded the Tulalip Tribes of Washington hereinafter "Tulalip Tribes" by Article VI, Section 1.A of the Constitution of the Tulalip Tribes, and the City of Marysville, Washington hereinafter "City" by Chapter 39.34 RCW, the Tulalip Tribes and the City possess the authority to execute an interlocal cooperation agreement for this purpose; and

WHEREAS, the City is required to complete monitoring and maintenance on City owned wetland properties; and

WHEREAS, the Tulalip Tribes owns, maintains, and monitors wetland property adjacent to City parcels; and

WHEREAS, the public good would be served by the Tulalip Tribes and the City cooperating in the monitoring and maintenance of wetland property; and

WHEREAS, Tulalip Tribes and the City are interested in developing partnerships and working cooperatively with each other in order to reduce project costs and eliminate duplication of services.

NOW, THEREFORE, Tulalip Tribes and the City, in consideration of the mutual benefits of this Cost Sharing Partnership, the parties agree as follows:

1.0 RESPONSIBILITIES:

1.1 Tulalip Tribes Responsibilities: Upon completion of the wetland monitoring Tulalip Tribes agree to furnish the City the following products and services:

- 1.1.1 Delivery of a portable disk drive containing all the wetland monitoring data, analysis and reports. Alternately, data can be provided via e-mail, or ftp.
- 1.1.2 Annual billing for wetland monitoring services, data, analysis and reports produced for the project. This also includes oversight of the financial accounting between the Tulalip Tribes and the City.

1.2 Tulalip Tribes to Perform Work: The Tulalip Tribes, its partners or contractors, will perform the wetland monitoring tasks. The Tulalip Tribes are solely responsible for ensuring that its partners or contractors complete all work and pays all subcontractors, workers and suppliers in conformance with applicable laws. The scope of services to be provided will include various methods of monitoring on the following parcels 30053300400200, 30053300401000, 30053400300800 and 00918500099000. Monitoring activities may include, but may not be limited to:

- i. Vegetation monitoring methods should document the following information:
 - (a) location and elevation (using RTK-GPS measurements),
 - (b) The dominant vascular plant species and subdominants present (up to 5 spp.) with relative abundance of the dominant and first 2 sub-dominant species (dense, >90% cover; medium, >40-90%; low 10-40%; and rare <10%), and 3) height and qualitative condition (robust, medium, stressed, senescing, dead) of the dominant plant species;

- (c) Any presence of invasive species (such as Reed canary grass (*Phalaris arundinacea*) Bohemian, giant, Himalayan and Japanese) species and hybrids (*Polygonum bohemicum*, *P. sachalinense*, *P. polystachyum*, and *P. cuspidatum*), purple loosestrife (*Lythrum salicaria*), and common reed (*Phragmites australis*))
 - (d) Cover of bare earth;
 - (e) Presence of large wood, and
 - (f) Presence of an entrained canopy.
- ii. Water level monitoring;
 - iii. Photographic monitoring, including aerial photography or automated stationary photo sites including the above listed properties; and
 - iv. Provide a report describing the monitoring activities listed above. The report should fulfill the requirements outlined in Exhibit A of the Advance Wetland Mitigation Agreement for the City of Marysville, Washington, between the City, the Washington State Department of Ecology and the US Army Corps of Engineers signed April 2013, or any subsequent amendments to that agreement.

1.3 City Responsibilities: Upon execution of the signed Cost Sharing Partnership with the Tulalip Tribes the City agrees to the following:

- 1.3.1 Designate one employee as a liaison between the Tulalip Tribes and the City as a single point of contact for work requests and disseminating information within the City and other agencies.
- 1.3.2 Shall provide a portable disk drive, large enough to hold all the data, to the Tulalip Tribes so that information can be loaded and delivered to the City. Alternately, the City will maintain e-mail or an ftp site for data transfer.
- 1.3.3 Reimburse The Tribes for services performed under this agreement in accordance with Section 4.

2.0 SERVICE CONDITIONS AND DATA LIMITATIONS

2.1 Acceptance of Completed Work: The Tulalip Tribes, its contractors or partners should submit all wetland monitoring data on a portable disk, via e-mail or the City's ftp site upon completion of data collection, analysis and report compilation. The City has fourteen (14) calendar days to inspect the product and notify, in writing, Tulalip Tribes of any product errors, omissions, flaws or incomplete work. If no errors are brought to the attention of Tulalip Tribes within fourteen (14) calendar days, the product acceptance and delivery shall be considered complete.

- 2.1.1 Vegetation monitoring should occur late summer/early fall (before leaf drop) in each monitoring year. Vegetation monitoring should occur in years 2017 (yr 2), 2018 (yr 3), 2020 (yr 5), 2022 (yr 7) and 2025 (yr 10). Wetland monitoring activities may be discontinued before 2025 depending on site conditions.

2.1.2 The Tulalip Tribes will give the City time to discuss data collected, analysis and report content before it is finalized.

2.1.3 The scope of services may vary throughout the duration of this Cost Sharing Partnership, as not all data is required by the City every year for the full term.

2.1.4 Monitoring methods can be modified if site conditions or requirements change without modification of this Cost Sharing Partnership.

2.2 Product Archival and Retention: Tulalip Tribes is not responsible for the backup, retention, or archive of products provided to the City. It is the City's responsibility to maintain hard copy and digital records in accordance with Public records Laws (RCW, 40.14 and WAC Section 434). In the event that the City requests from the Tulalip Tribes another copy of the products, Tulalip Tribes shall be financially compensated for their actual costs to create and deliver an additional copy of the products.

2.3 Data: The Tulalip Tribes will be responsible for the accuracy of the data collected, the work product and documents produced for the City under this Agreement. Data is expected to be collected and compiled to meet Washington State Department of Ecology and US Army Corps of Engineers standards. The data collection and report should fulfill the requirements outlined in Exhibit A of the Advance Wetland Mitigation Agreement for the City of Marysville, Washington, between the City, the Washington State Department of Ecology and the US Army Corps of Engineers signed April 2013, or any subsequent amendments to that agreement.

3.0 DATA LIABILITY AND IDEMINIFICATION

3.1 Liability: Tulalip Tribes is supplying this information in good faith and the City agrees to hold Tulalip Tribes, its elected or appointed officers, employees or agents harmless for any liability incurred as a result of using products under this Partnership, unless liability occurs as a result of the Tulalip Tribes negligence.

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

3.3 No Joint Venture or Separate Entity: No joint venture or partnership is formed as a result of this Cost Sharing Partnership and no separate entity is created. The relationship of the parties is set forth in this Cost Sharing Partnership.

3.4 Damages: Neither party will seek damages, either direct, consequential, or otherwise against the other in addition to the remedies stated herein unless the damages are a direct result negligence.

3.5 Third Party Claims: In the event that either party is found liable for damages to third parties as a result of the performance of services under this Cost Sharing Partnership, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities under this Cost Sharing Partnership.

4.0 SERVICE CHARGES AND PAYMENT PROVISIONS

4.1 Reimbursement Procedure: Upon acceptance of the monitoring report the City will reimburse the Tulalip Tribes for the costs associated with monitoring activities on City property, as evidenced by invoices submitted to the Tulalip Tribes by its partners or contractor, or invoices created for Tulalip Tribes employee time. Payment should be made by the City within thirty (30) days of acceptance or submission of invoices whichever is later. If during monitoring activities, the Tulalip Tribes determine that additional or changed work is required to complete the project, the Tulalip Tribes shall promptly notify the City and obtain written approval from the City for such work.

4.2 Payment for Project Costs: Reimbursable costs may vary by year based on the data required for the year. The reimbursable costs are not to exceed \$15,000 per year.

4.3 Ownership of Property: Except as expressly provided to the contrary in this Cost Sharing Partnership, the real or personal property used or acquired by either party in connection with its performance under this Cost Sharing Partnership will remain the sole property of such party, and the other party shall have no interest therein.

5.0 Cost Sharing Partnership TERM AND TERMINATION

5.1 Cost Sharing Partnership Term: This Cost Sharing Partnership commences upon execution by signature of both parties and shall terminate December 31, 2025 (yr 10).

5.2 Termination and Modification:

- a. This Cost Sharing Partnership may be terminated by either party for convenience at any time by delivering written notice of termination to the other party's representative. The notice of termination is effective thirty (30) days following receipt. If the notice is delivered by mail, the notice of termination is deemed to have been received three (3) business days after it is placed in the postal system with the correct address and correct postage.
- b. This Cost Sharing Partnership may be modified or terminated at any time by mutual written agreement of the parties.
- c. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Cost Sharing Partnership or law that either party may have in the event that the powers, rights, and responsibilities set forth in this Cost Sharing Partnership are breached by the other party.

6.0 MISCELLANOUS COST SHARING PARTNERSHIP PROVISIONS

Payment of Taxes: If Tulalip Tribes is required to pay sales or use tax in order to provide service under this Cost Sharing Partnership, such taxes will be billed to City.

6.1 Invoices and Late Payment: Tulalip Tribes will provide a detailed invoice to the City when products are delivered and accepted. Payment is due upon receipt of invoice by City and becomes delinquent 30 days thereafter. A late payment charge may be applied to any remaining balance 60 days after invoice. Late payment charges, if any, will be imposed on the unpaid balance at the rate of 1% per month. Cost Sharing Partnerships with balances more than 90 days past due may be terminated

under the TERMINATION FOR CAUSE provision of this Cost Sharing Partnership, and services discontinued. Amounts disputed by the City are not subject to late payment charges.

6.2 Disputes: The City will promptly notify Tulalip Tribes of disputes regarding invoices, or of services which the City believes do not conform to the agreed upon terms of this Cost Sharing Partnership.

6.3 Dispute Resolution: The Parties agree that any disputes arising out of or relating to this Cost Sharing Partnership 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, binding arbitration. Arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. 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 in any court of competent jurisdiction.

6.4 Termination for Cause Right to Cure and Payment: If Tulalip Tribes or City does not fulfill in a timely and proper manner their performance obligations under this Cost Sharing Partnership, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within 30 working days. If the failure or violation is not corrected, this Cost Sharing Partnership may be terminated immediately by written notice from the aggrieved party to the other party. Upon termination of this Cost Sharing Partnership for cause, City will pay for services rendered prior to the effective date of the termination. An equitable adjustment in the Cost Sharing Partnership price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work.

6.5 Assignment: This Cost Sharing Partnership may not be assigned by either party to a third party without the prior written consent of both Tulalip Tribes and City.

6.6 Waiver: Waiver of any breach or condition of this Cost Sharing Partnership shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Cost Sharing Partnership shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

6.7 Severability: In the event any term or condition of this Cost Sharing Partnership or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Cost Sharing Partnership that can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Cost Sharing Partnership are declared severable.

7.0 PARTY REPRESENTATIVES

Listed below are the parties' representatives for purposes of carrying out this Cost Sharing Partnership. All notices and communications which may be required by this Cost Sharing Partnership shall be in writing and may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

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

City of Marysville
80 Columbia Ave
Marysville, WA 98270

Contact: Brooke Ensor
Telephone Number: (360) 363-8288
E-mail: bensor@marysvillewa.gov

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

Tulalip Tribes of Washington
6406 Marine Drive
Tulalip, WA 98271

Contact: Todd Zackey
Telephone Number: (360) 716-4637
E-mail: tzackey@tulaliptribes-nsn.gov

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.

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

Dated this ____ day of _____, 2017.

CITY OF MARYSVILLE

TULALIP TRIBES OF WASHINGTON

Jon Nehring, Mayor

Attest:

April O'Brien, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney