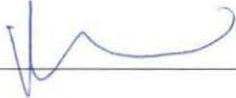


**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: December 9, 2019**

<b>AGENDA ITEM:</b>	
Purchase of Wetland Mitigation Credits for the State Avenue 100 <sup>th</sup> Street NE to 104 <sup>th</sup> Street NE Corridor Improvement Project	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Patrick Gruenhagen, Project Manager	
<b>DEPARTMENT:</b>	
Engineering	
<b>ATTACHMENTS:</b>	
• Buy/Sell Agreement	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
30500030.563000, R1601	\$16,800.00
<b>SUMMARY:</b>	
<p>In accordance with an environmental permit recently received from the US Army Corps of Engineers, the City is obligated to mitigate for impacts to sensitive areas that will occur as a result of the upcoming State Avenue (100<sup>th</sup> St. NE to 104<sup>th</sup> St. NE) Corridor Improvement Project. The City determined that the most cost-efficient way to do so would be through a combination of on-site plantings and wetland enhancements, in conjunction with purchase of wetland mitigation “credits” from an approved wetland bank.</p> <p>The attached Buy/Sell Agreement between the City and Mitigation Banking Services, LLC is for the purchase of 0.08 mitigation credits at an overall purchase price of \$16,800.00 for mitigation of impacts to Category II wetlands which are located along Quilceda Creek in the area of the new bridge crossing.</p>	
<b>RECOMMENDED ACTION:</b>	
Staff recommends that Council authorize the Mayor to sign the enclosed Buy/Sell Agreement with Mitigation Banking Services, LLC, for the purchase of 0.08 wetland credits in the amount of \$16,800.00, thereby mitigating unavoidable wetland impacts arising from the State Avenue 100 <sup>th</sup> St. NE to 104 <sup>th</sup> St. NE Corridor Improvement Project.	
<b>RECOMMENDED MOTION:</b>	
I move to authorize the Mayor to sign and execute the enclosed Buy/Sell Agreement with Mitigation Banking Services, LLC, for the purchase of 0.08 wetland credits in the amount of \$16,800.00, thereby mitigating unavoidable wetland impacts arising from the State Avenue 100 <sup>th</sup> St. NE to 104 <sup>th</sup> St. NE Corridor Improvement Project.	

## **WETLAND MITIGATION CREDIT BUY/SELL AGREEMENT MITIGATION BANKING SERVICES**

This Wetland Mitigation Credit Buy/Sell Agreement (“Agreement”) is made by and between Mitigation Banking Services, LLC, a Washington limited liability company (“MBS” or “Credit Seller”), and City of Marysville, a political subdivision of the State of Washington (“Buyer”) (collectively “Parties”).

### **1. RECITALS**

- 1.1. Mitigation Banking Services, LLC has been contracted by the Snohomish Basin Mitigation Bank (“SBMB”) and the Skykomish Habitat Mitigation Bank (“SHMB”) to market and sell their mitigation credits.
- 1.2. With approval and authorization from the Washington State Department of Ecology (“Ecology”), U.S. Army Corps of Engineers (“Corps”), Environmental Protection Agency (“EPA”), Washington State Department of Natural Resources (“DNR”), and Snohomish County (“County”) (collectively the “Permitting Authorities”), the SBMB and SHMB have been established.
- 1.3. The SBMB and SHMB are established to operate within a portion the State of Washington’s Water Resource Inventory Area Number 7 (“WRIA No. 7”), which portion constitutes the banks “Service Area.”
- 1.4. The purpose of the SBMB and SHMB are to provide off-site mitigation for unavoidable impacts to wetlands and other critical area associated with certain development activity within the Service Area.
- 1.5. The SBMB and SHMB are authorized by the Permitting Authorities to sell and transfer wetland and critical area mitigation credits for permits, said credits being units of trade representing the increase in ecological value of a site, as measured by acreage, functions, and/or values (“Mitigation Credits”).
- 1.6. Buyer contemplates undertaking a development activity within the Service Area (“Project”), which will require permits and/or approvals (“Permit(s)”) from regulatory agencies and which development activity may cause unavoidable impacts to wetlands or other critical areas and may require mitigation. Buyer is solely responsible for determining whether such mitigation can be satisfied by its acquisition of Mitigation Credits.
- 1.7. Buyer wishes to purchase from MBS and MBS wishes to sell to Buyer Mitigation Credits from the SBMB and or the SHMB for the Project on the terms and conditions contained in this Agreement.

## 2. **AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and conditions and promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Credit Seller and Buyer agree as follows:

### 2.1. **Purchase/Sale of Mitigation Credits**

- 2.1.1. **Purchase/Sale.** Credit Seller hereby sells to Buyer and Buyer hereby buys from Credit Seller: (0.08) Mitigation Credits from the Snohomish Basin Mitigation Bank upon all of the terms, covenants, and conditions set forth in this Agreement (“Project Mitigation Credits”).
- 2.1.2. **Purchase Price.** The purchase price for the Project Mitigation Credits shall be Sixteen Thousand Eight Hundred and 00/100 Dollars (U.S. \$16,800.00) (“Purchase Price”).
- 2.1.3. **Payment.** Buyer agrees to pay the Purchase Price to Credit Seller within 30 days of the effective date.

### 2.2. **Buyer's Obligations/Limitation on Transfer of Mitigation Credits/Project Information.**

- 2.2.1. **Mitigation Credits for Project.** Buyer shall be solely responsible for determining whether the Mitigation Credits may be used for the Project and the Permit(s). Credit Seller provides no representation or warranty as to the utility or applicability of the Mitigation Credits to the Project or Permit(s). Buyer acknowledges and agrees that Credit Seller shall sell the Project Mitigation Credits specifically for the Permit(s) identified in Section 2.2.2 below and that, as of Closing, said credits shall not be transferable.

#### 2.2.2. **Project.** The Project, Permit(s), and related information is as follows:

##### 2.2.2.1. Buyer's name, address, & telephone number:

City of Marysville Public Works  
City Engineer Jeff Laycock  
80 Columbia Avenue  
Marysville, WA 98270  
360-363-8274

##### 2.2.2.2. Permitting Agency(ies) name(s), address(es), telephone number(s):

U.S. Army Corps of Engineers (USACE)  
Bethany Nickison, Project Manager  
P.O. Box 3755  
Seattle, Washington 98124-3755  
206-316-3165

2.2.2.3. Permit(s) Number(s) Date of Permit:

<u>Permit Agency</u>	<u>Number</u>	<u>Date of Issuance</u>
USACE	NWS-2017-1013	June 7, 2019

2.2.2.4. Project Name & Location: City of Marysville State Avenue 100<sup>th</sup> Street NE to 104<sup>th</sup> Street NE Corridor Improvement Project (USACE Reference NWS-2017-1013) located along State Avenue from 100<sup>th</sup> Street NE to 104<sup>th</sup> Street NE in the City of Marysville, Washington.

2.2.2.5. Brief Description of Impact(s) to be Compensated for by the Project  
Mitigation Credits: The proposed project would permanently impact 0.080 acre of Wetland 1 and 0.010 acres of Wetland 2, located along Quilceda Creek upstream and downstream of the proposed road improvements. Additionally, clearing and grubbing activities and temporary access road construction would temporarily impact 0.18 acre of Wetland 1 and 0.26 acre of Wetland 2. These impacts are unavoidable after the incorporation of the minimization measures.

2.2.3. **Disclosure.** Buyer acknowledges and agrees that Credit Seller may, as part of the process for transferring the Project Mitigation Credits, disclose the information provided under Section 2.2.2 above to the permitting agency(ies) described in Section 2.2.2, the Snohomish County Auditor, and the Permitting Authorities.

**2.3. Title/Risk of Loss**

2.3.1. **Conveyance.** Upon receipt of payment Credit Seller shall convey to Buyer the Project Mitigation Credits, free of liens, encumbrances, restrictions, rights, and conditions, except as expressly provided for herein. Conveyance shall be in the form of a letter from the Credit Seller to the Buyer and Permitting Authorities notifying them that credits have been transferred from the banks to the Buyer for the permits and projects detailed in Section 2.2.2

2.3.2. **Risk of Loss.** Credit Seller shall bear the risk of loss of the Project Mitigation Credits prior to Closing.

**2.4. Representations and Warranties**

Credit Seller represents and warrants to Buyer that:

2.4.1. Credit Seller is authorized by the SBMB and the SHMB to sell and transfer wetland and critical area mitigation credits for permits from those banks to the Buyer.

## 2.5. Closing

- 2.5.1. **Closing and Closing Date.** The closing of the purchase and sale of the Project Mitigation Credits ("Closing") shall occur when the Credit Seller receives a cashier's check for the purchase amount, under the terms of this Agreement
- 2.5.2. **Limits on Closing Date.** The Closing Date shall not be modified without the written approval of Credit Seller and Buyer.

## 2.6. Notice

- 2.6.1. Except as may be otherwise expressly provided for herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered or sent: (a) in person; (b) by U.S. Mail, postage prepaid and certified with return receipt requested; or (c) by nationally recognized overnight delivery service, prepaid, and addressed as set forth below. Either party may change its address by notifying the other party in writing of the change of address. Notice shall be deemed delivered immediately, if delivered in person, or within two days if sent by any other means set forth in this Section 2.6.
- 2.6.2. If to Credit Seller: Mitigation Banking Services, LLC  
PO BOX 354  
Kirkland, WA 98033-0354
- 2.6.3. If to Buyer: As provided in Section 2.2.2 above.

## 2.7. Miscellaneous

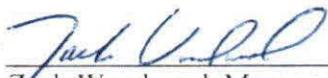
- 2.7.1. **Effective date.** The effective date of this Agreement shall be the earliest date by which both Credit Seller and Buyer have executed this Agreement.
- 2.7.2. **Assignment.** Buyer's rights under this Agreement shall not be assigned or apportioned, either voluntarily or by operation of law, without the prior written consent of Credit Seller, which shall be in Credit Seller's reasonable discretion. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.
- 2.7.3. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the purchase and sale of the Project Mitigation Credits, and supersedes and replaces any prior agreements and understandings, whether oral or written, between them with respect to said matters.
- 2.7.4. **Confidentiality.** The existence of this Agreement and the number of Project Mitigation Credits may be disclosed to the permitting agency(ies) described in Section 2.2.2 above and the Permitting Authorities.

- 2.7.5. **Time.** Time is of the essence of this Agreement.
- 2.7.6. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.
- 2.7.7. **Amendment.** No change or modification of this Agreement shall be valid unless the same is in writing and signed by the Parties. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.
- 2.7.8. **Captions.** The captions of this Agreement have no effect upon its interpretation and are for convenience and ease of reference only.
- 2.7.9. **Severability.** The unenforceability, invalidity, or illegality of any provision hereof shall not render any other provision unenforceable, invalid, or illegal.
- 2.7.10. **Computation of Time.** If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a weekend or holiday, then such date shall be automatically extended to the next succeeding weekday that is not a holiday.
- 2.7.11. **Attorneys' Fees.** In the event either party to this Agreement finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants, or conditions of this Agreement or any instrument executed pursuant to this Agreement, or by reason of any breach or default under this Agreement, the prevailing party in any such action or proceeding (and any appeal thereof) shall be paid all costs and reasonable attorneys' fees by the other party. This provision shall survive Closing and shall not be merged into the Bill of Sale.
- 2.7.12. **Acts Beyond Party's Control.** Neither party to this Agreement shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such party is prevented from fulfilling such obligation by, or such condition fails to occur due to, forces beyond such party's reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public authority, or act or failure to act by court, public authority, or third party, which forces by exercise of due diligence and foresight such party could not reasonably have expected to avoid.
- 2.7.13. **No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Buyer and Credit Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Agreement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 2.7.14. **Counterparts/Faxes.** This Agreement may be executed in one or more

counterparts with like effect as if all signatures appeared on one copy. Facsimile transmission of any signed original document (other than the Bill of Sale), and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party or the Escrow Agent, the Parties shall confirm facsimile transmitted signatures by signing an original document.

The Parties have executed this Agreement as of the dates set forth below.

“MBS” OR “CREDIT SELLER”  
MITIGATION BANKING SERVICES, LLC, Credit Seller

By   
Zach Woodward, Manager MBS

11-08-2019  
Date

“BUYER”

CITY OF MARYSVILLE,

By \_\_\_\_\_  
Jon Nehring, Mayor

\_\_\_\_\_  
Date