

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: November 9, 2020

AGENDA ITEM:	
Centennial Trail Connector – WSDOT Vegetation/Timber Removal and Mitigation Payment Agreement	
PREPARED BY:	DIRECTOR APPROVAL: <i>DC for KN</i>
Kyle Woods, Project Engineer	
DEPARTMENT:	
Public Works, Engineering	
ATTACHMENTS:	
Agreement	
BUDGET CODE:	AMOUNT:
P1601.31000076.563000	\$32,865.00
SUMMARY:	

The Centennial Trail Connector project proposes to extend the existing Bayview Trail to the Centennial Trail. As part of this project, the trail will cross through WSDOT owned property in the vicinity of State Route 9. In order to construct the trail through WSDOT property, it is necessary to remove trees.

In accordance with the WSDOT’s permitting requirements, the City is obligated to replant the trees at a ratio of 6:1, irrigate, and maintain the trees for 8 years, or as an alternative, pay a fee-in-lieu of.

Staff determined that the most cost-efficient way to mitigate the trees on WSDOT property would be to pay a fee-in-lieu of, rather than plant, irrigate, and maintain the trees for 8 years. The one-time fee to mitigate the trees on WSDOT property is \$32,865.00.

<p>RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to sign and execute the enclosed Vegetation/Timber Removal and Mitigation Payment Agreement with WSDOT.</p> <p>PROPOSED MOTION: I move to authorize the Mayor to sign and execute the agreement.</p>



Vegetation/Timber Removal and Mitigation Payment Agreement [for Non-Utility]			Entity Name & Address City of Marysville 80 Columbia Avenue Marysville, WA 98270
Agreement Number GCB 3412		Section/Location	
State Route Number 9	Milepost 21.11	Control Section No.	Region NWR
Total Vegetation Mitigation Payment to State \$ 32,865.00			
Total Merchantable Tree Value Payment to State \$ 0			

This Agreement, made and entered into between the Washington State Department of Transportation, hereinafter, "WSDOT" and the above named entity, hereinafter, "Entity."

RECITALS

A. The Entity will perform/has performed work (the "Project") on WSDOT right of way pursuant to a

The City of Marysville will be removing 2 Scouler's willow and 2 Black cottonwood trees from WSDOT Right of Way as part of their Centennial Trail Connector Project.

[insert name and identifying information for document that authorizes entity to be on WSDOT real property, if any, e.g. Right of Entry, Lease, etc.] ("Underlying Authorization").

B. The Project required/will require the removal or destruction of certain trees or other vegetation from the WSDOT right of way, as identified in the attached Exhibit A.

C. WSDOT's Roadside Policy Manual (M3110), Chapter 2, Section 6, requires that the Entity to replace trees or other vegetation removed or destroyed as a result of the Project.

D. WSDOT and the Entity agree that it is impracticable undesirable, or impossible to replace in kind within the Project footprint trees or other vegetation removed or destroyed as a result of the Project.

E. The trees or other vegetation removed or destroyed as a result of the Project are an asset of the Motor Vehicle Fund and the value thereof must be returned to the Motor Vehicle Fund.

F. The Entity has agreed to pay the estimated replacement and restoration cost of trees or other vegetation removed or destroyed as a result of the Project in lieu of Entity's obligation to replace the trees or other vegetation, as set forth in Exhibit B.

G. If the Project requires the removal of trees that have merchantable value (Merchantable Timber), the Entity has agreed to pay the fair market value of the Merchantable Timber.

NOW THEREFORE, pursuant to the above recitals that are incorporated as if fully set forth below and in consideration of the terms, conditions, covenants, and performance contained herein, including any Exhibits attached which are incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE: The purpose of this Agreement is to establish Entity responsibilities associated with the removal or destruction of trees or other vegetation from the WSDOT right of way as a result of the Project (the "Work").
2. REMOVAL OF TREES AND OTHER VEGETATION
 - 2.1 Subject to the terms and conditions herein, Entity is authorized to remove the trees and other vegetation identified on the attached Exhibit A.
 - 2.2 In performing the Work, the Entity shall comply with the following:
 - 2.2.1 The Entity shall perform the Work in a manner consistent with this Agreement obtaining any necessary permit(s) and otherwise complying with applicable Federal and State of Washington laws, regulations, and rules for the Work.
 - 2.2.2 The Entity shall remove the trees or other vegetation from the WSDOT right of way in a workmanlike manner.
 - 2.2.3 All Work performed within WSDOT right of way shall be subject to the terms of the Underlying Authorization, including but not limited to terms that cover right of entry and access restrictions, notification requirements, indemnification, relocation, damage to the highway, etc., if any.
 - 2.3 The Entity shall pay to WSDOT the sum of thirty-two thousand eight hundred sixty five Dollars (\$ 32,865) representing the estimated costs of replacing the trees or other vegetation removed or destroyed, and all associated direct and indirect costs, as a result of the Project in lieu of Entity's obligation to replace the trees or other vegetation, as set forth in Exhibit B. Payment shall be made by cash or check payable to the Washington State Department of Transportation (for deposit into the Vegetation Mitigation Fund) and shall be delivered to the WSDOT representative listed in Section 7 a minimum of 15 calendar days prior to commencing the Work.
3. MERCHANTABLE TIMBER:
 - 3.1 If the Work includes the removal of Merchantable Timber, the terms and conditions of Sections 3.2 – 3.4 shall apply.
 - 3.2 The Entity shall comply with the following:
 - 3.2.1 The Merchantable Timber Requirements in the current Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, Section 1-07.3(2), including obtaining any necessary permit(s) and otherwise complying with applicable Federal and State of Washington laws, regulations, and rules for the Work.
 - 3.2.2 The Entity understands and agrees that Merchantable Timber removed from WSDOT land is export restricted. Further, the Entity agrees to be responsible for, and shall ensure that its contractor, if any, complies with, the requirements of the Washington State Department of Revenue regarding Timber Sale/Log Export certifications, as follows: "Purchaser Certificate for Export Restricted Timber" (REV 62 0077e) and a "Disposition Certificate for Export Restricted Timber" (REV 62 0084e). To ensure the current versions of the forms are used, Entity shall download the forms through the Washington State Department of Revenue website:
http://dor.wa.gov/content/findtaxesandrates/othertaxes/timber/forst_LogExportRegulations.aspx
 - 3.2.3 The Entity shall provide copies of the completed and signed certifications to the WSDOT representative listed in Section 7 on or before substantial completion of the Work. Entity shall include the WSDOT Permit/Franchise number in its submittal.
- 3.3 The fair market value of the Merchantable Timber shall be calculated by the Entity using the latest U.S. Forest Service stumpage value determination tables. The Merchantable Timber removed/to be removed and the calculation of the fair market value of that Merchantable Timber, and all associated direct and indirect costs, is set forth in Exhibit A.

- 3.4 The Entity shall pay to WSDOT the sum of zero Dollars (\$0) for the fair market value of Merchantable Timber, and all associated direct and indirect costs, as shown in Exhibit A. Payment shall be made by cash or check payable to the Washington State Department of Transportation (for deposit into the Motor Vehicle Fund) and shall be delivered to the WSDOT representative listed in Section 4 a minimum of 15 calendar days prior to commencing the Work.
4. Except with respect to the form of compensation to payable to WSDOT as set forth above, nothing in this Agreement shall diminish the Entity's obligation under the Underlying Authorization or the Roadside Policy Manual to restore that part of the WSDOT right of way disturbed by the Project.
5. The Work may be performed by the Entity or a qualified contractor on its behalf; provided, that if the Work is performed by a contractor on behalf of the Entity, the Entity shall include the terms and conditions of this Agreement in said contract and ensure the contractor complies with all applicable terms and conditions.
6. EXTENT OF AGREEMENT: This Agreement and all documents incorporated herein set forth all of the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.
7. REPRESENTATIVES: The persons responsible for administration of this Agreement on behalf of each party shall be as set forth below. All correspondence, letters or other notices shall be directed to the foregoing parties at the following addresses/phone numbers, or to their established agency designee:

ENTITY:

Jon Nehring, Mayor
 City of Marysville
 1049 State Ave
 Snohomish, WA 98296

WSDOT:

Lindsey Jungbluth
 NWR Landscape Architect WSDOT
 15700 Dayton Ave N, NB 82-109
 PO Box 330310
 Seattle, WA 98133-9710
 jungblL@wsdot.wa.gov (206-440-4506)

8. STATUS OF AGREEMENT: This Agreement is in addition to, and is not intended to replace, substitute, modify or otherwise amend any other agreement, including the Underlying Authorization or any other permits issue by WSDOT to the Entity. This Agreement is limited to the purposes stated herein. Any other agreements continue in effect according to the specific terms of those agreements.
9. DURATION AND TERMINATION:
- 9.1 The term of this Agreement begins upon execution by WSDOT and terminates upon receipt of payment by WSDOT and substantial completion of the Work.
- 9.2 This Agreement may be terminated by either party on 30 calendar days written notice, but such termination shall not prejudice any rights or obligations accrued to WSDOT or the Entity prior to the effective date of termination.
10. DISPUTES AND VENUE
- 10.1 In the event that a dispute arises under this Agreement, the WSDOT and the Entity representatives shall work in good faith to resolve the matter as expeditiously as possible.

10.2 The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Agreement.

10.2.1 FOR WSDOT:

{Insert name, title, mailing address, email & phone}

Ramin Pazooki
 NW Region Utilities & Development Services Manager WSDOT
 15700 Dayton Ave N, NB 82-240
 PO Box 330310
 Seattle, WA 98133-9710
 pazookr@wsdot.wa.gov (206-440-4710)

10.2.2 FOR ENTITY:

{Insert name, title, mailing address, email & phone}

Kyle Wood, Project Engineer
 City of Marysville
 80 Columbia Avenue
 Marysville, WA 98270
 kwoods@marysvillewa.gov (425-344-1505)

10.3 The Designated Representatives shall confer to resolve disputes that arise under this Agreement as requested by either party. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

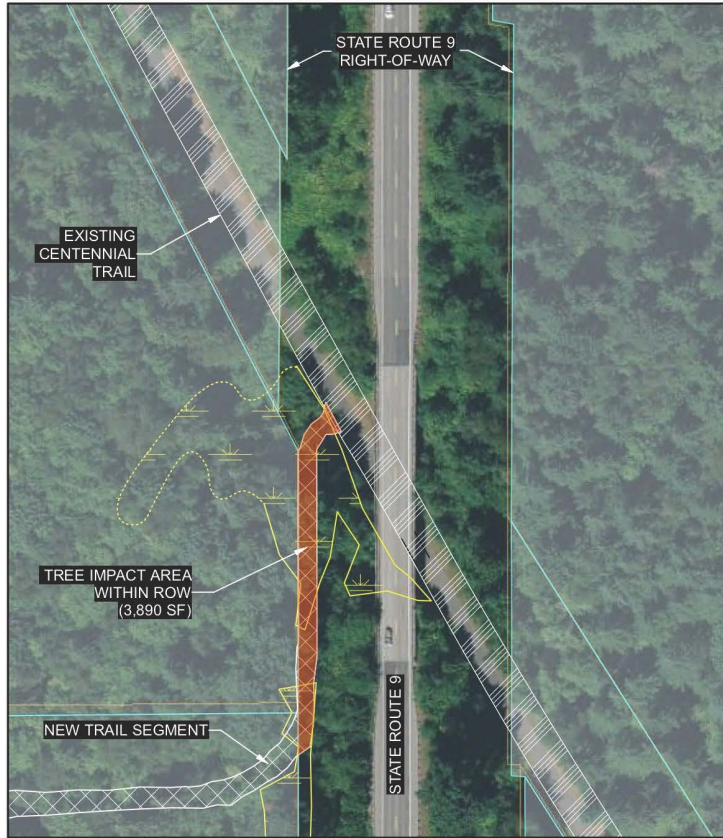
10.4 In the event the Designated Representatives are unable to resolve the dispute, the Manager of NWR Utility & Developer Services or his/her designee for WSDOT, and the Mayor or her/his designee for Entity shall confer and exercise good faith to resolve the dispute.

10.5 In the event the party representatives identified in Section 10.4 above are not able to resolve the dispute, either party may institute a legal action in the County of Thurston, State of Washington. The parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted. Further, the parties agree that each will be solely responsible for payment of their own attorneys' fees, witness fees, and costs.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year last written below.

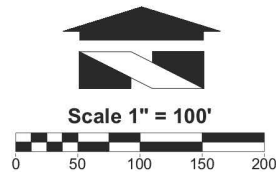
ENTITY	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Signature: _____	Signature: <u>Ramin Pazooki</u>
By: <u>Jon Nehring</u> Print Name	By: <u>Ramin Pazooki</u> Print Name
Title: <u>Mayor</u>	Title: <u>Utilities & Developer Services Manager</u>
Date: _____	Date: <u>9/30/2020</u>

**EXHIBIT A - TREE REMOVAL IN STATE ROUTE 9 RIGHT-OF-WAY
CITY OF MARYSVILLE - CENTENNIAL TRAIL CONNECTOR
PORTION OF SECTION 13, TOWNSHIP 30N, RANGE 5E, W.M.**



<i>Impacted Trees</i>			
Common Name	Latin Name	Diameter	Category
Scouler's willow	<i>Salix scouleriana</i>	4.9"	2
Scouler's willow	<i>Salix scouleriana</i>	4.0"	2
Black cottonwood	<i>Populus balsamifera</i>	31.8"	1
Black cottonwood	<i>Populus balsamifera</i>	35.3"	1

LEGEND	
	PROPOSED NEW TRAIL SEGMENT (CLEARING LIMITS)
	EXISTING TRAIL
	TREE IMPACT WITHIN RIGHT-OF-WAY
	DELINEATED WETLAND BOUNDARY
	APPROX. WETLAND BOUNDARY



Item 3 - 6

Wetland Resources, Inc.
Delimitation / Mitigation / Restoration / Habitat Creation / Permit Assistance
 9505 19th Avenue S.E. Suite 106 Everett, Washington 98208
 Phone: (425) 337-3174
 Fax: (425) 337-3045
 Email: mailbox@wetlandresources.com

Exhibit A - Tree Removal in
 State Route 9 Right-of-Way
City of Marysville - Centennial Trail Connector
 City of Marysville

City of Marysville
 Attn: Kyle Woods
 1049 State Ave
 Marysville, WA 98270

Sheet 1/1
 Project Number: 18037
 Drawn by: JG
 09/03/2020

Exhibit "B" Sheet 1 of 1
Timber Mitigation Agreement No. GCB 3412
SR 9 (MP 21.11)
City of Marysville Centennial Trail Connector

Type of Tree		Cost per inch DBH	Total Cost
Scouler's Willow	4.9	\$300.00	\$1,470.00
Scouler's Willow	4	\$300.00	\$1,200.00
Black Cottonwood	31.8	\$450.00	\$14,310.00
Black Cottonwood	35.3	\$450.00	\$15,885.00
			\$32,865.00