

INTERAGENCY AGREEMENT BETWEEN
CITY OF EVERETT, WASHINGTON

AND

NORTHSHORE PARKS AND RECREATION SERVICE AREA

This Agreement is made and entered into by and between the **City of Everett**, hereinafter referred to as "City", and the **Northshore Parks and Recreation Service Area**, hereafter referred to as "Agency," each party having been duly organized and now existing under the laws of the State of Washington.

WHEREAS, the City has entered into a job order contract as authorized by Chapter 39.10 RCW with Forma Construction ("Contractor") dated on or about November 20, 2021, as amended by amendments 1 (the "JOC Contract"); and

WHEREAS, the JOC Contract was procured by a Request for Proposals, "Job Order Contracting – General Construction Services RFP #2021-022" dated July 13, 2021, and this Request for Proposals stated that the JOC Contract may be used by other agencies; and

WHEREAS, Amendment No. 1 to the JOC Contract provides an opportunity for other public agencies to use the terms and conditions of the JOC Contract ("JOC Amendment No. 1"); and

WHEREAS, the Agency wishes to utilize, in part, the terms and conditions of the JOC Contract to perform various Agency job order projects on Agency facilities; and

WHEREAS, the City desires to enter into this Agreement with Agency to allow the Agency to utilize the terms and conditions of the JOC Contract; and

WHEREAS, the parties hereto have determined that they have the authority to enter into this Agreement in accordance with Chapter RCW 39.34 RCW, Interlocal Cooperation Act, and their respective policies and procedures, as amended.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. STATEMENT OF WORK

Subject to the provisions of this Agreement, the Agency may issue job orders to Contractor for job order construction services. The job order construction services for such Agency job orders will be provided by Contractor directly to the Agency on the same terms and conditions as the JOC Contract, except that for such Agency job order construction services:

- (a) the City will not be a party to the job order between Agency and Contractor for such services;
- (b) the obligations owed by Contractor to the City under the terms and conditions of JOC Contract will instead be owed by Contractor to the Agency, including but not limited to obligations to provide performance and payment bonds to Agency for work performed for

the Agency and to provide insurance endorsements that name the Agency as additional insured; and

- (c) the obligations owed by the City to Contractor under the the terms and conditions of JOC Contract will instead be owed by the Agency to Contractor, including but not limited to obligations to pay for construction services rendered by Contractor.

A copy of the JOC Contract, is attached hereto as Attachment "A". In the event that the City and Contractor further amend the JOC Contract, the terms and conditions of of such amendment will apply from its effective date to job order construction services provided to Agency.

All job orders issued by Agency to Contractor shall state substantially the following: "All work described herein is provided to the Agency by Contractor in connection with Amendment No. 4 to the Job Order Contract between Forma Construction and the City of Everett. The City of Everett is not a party to, nor responsible for, performance of or payment for the work described in this job order." However, the omission of such provision from a job order shall not change any persons' rights or obligations under this Agreement or JOC Amendment No. 1.

Contractor will directly invoice the Agency for any and all such construction services provided. Prior to the issuance of any job orders by Agency, the Agency and Contractor will sign a letter agreement provided by the City, which will confirm the agreement for provision of job order construction services to the Agency.

2. TERMS AND CONDITIONS

The Agency and City agree that any work performed for the Agency by Contractor and its respective subcontractors under this Agreement shall be conducted in accordance with the terms and conditions of the JOC Contract as set forth in this Agreement.

3. PERIOD OF PERFORMANCE

The period of performance of this Agreement shall commence when this Agreement is signed by both parties and be completed no later than November 19, 2024, unless changed by Amendment to this Agreement.

4. COMPENSATION; PAYMENT PROCEDURE

The total value of all job orders issued by the the Agency to Contractor shall not exceed \$2,000,000 over the course of the the three contract years. Contractor shall directly invoice the Agency and the Agency shall directly pay Contractor pursuant to the payment and compensation terms identified within the JOC Contract, respectively.

5. RECORDS MAINTENANCE

City, Agency, Contractor and their contractors, subcontractors, sub-consultants, representatives and employees shall each maintain books, records, documents, and other evidence for six (6) years after the expiration of this Agreement (unless a longer period of time is specified in applicable records retention policies in which case such policies shall prevail). These records shall be subject to inspection, review, or audit by personnel of both parties' and other personnel duly authorized by either party, or the Washington State Auditor.

6. CONTRACT MANAGEMENT

- (a) Theresa Bauccio-Teschlog will be the City Representative for all communications regarding this

Agreement. The City Representative shall be responsible for monitoring the performance of this Agreement.

(b) Barbara Glass and Christine Disnute will be the Agency Representatives for all communications regarding this Agreement. The Agency Representatives shall be responsible for monitoring the performance of this Agreement.

(c) Rob Wettleson shall serve as the Contractor Representative for all communications regarding the job order construction services as addressed herein.

7. NO CITY RESPONSIBILITY

The Agency specifically agrees that the City shall have no liability or responsibility whatsoever for the Agency's use of the terms and conditions of the JOC Contract, the performance of Contractor, or any other matter relating to Agency job orders. The Agency, and not the City, shall have complete responsibility for paying Contractor for services related to Agency job orders. The City makes no representations or warranties of any kind, including without limitation no representations or warranties regarding contractors, performance, Contractor's insurance and bonds, or the enforceability of the terms and conditions of the JOC Contract against the Contractor. The Agency uses Contractor and uses the terms and conditions of the JOC Contract all solely at Agency's own risk.

8. INDEMNIFICATION AND RELEASE

The Agency releases and shall indemnify, defend and hold harmless the City and its officers, employees and agents (each such person, an "Indemnitee") from and against any and all claims, actions, damages, liability, costs and expenses, including attorney's fees, arising out of or relating to (a) any Agency job order to Contractor, (b) the Agency's use of the terms and conditions of the JOC Contract and (c) any work done by Contractor or its subcontractors for the Agency. The foregoing indemnity, defense, and hold harmless obligation includes without limitation indemnity, defense, and hold harmless for each Indemnitee from and against any request, claim or demand for payment by Contractor or Contractor's subcontractors or Contractor's suppliers or Contractor's employees in connection with Agency job orders. This Section is specifically and expressly intended to constitute a waiver of the Agency's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide each Indemnitee with a full and complete indemnity from claims made by the Agency and its employees, to maximum extent allowed by law. AGENCY AND CITY ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

9. TERMINATION

Either party may terminate this Agreement upon thirty (30) days written notification. If this Agreement is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Agreement for performance rendered prior to the effective date of termination.

10. ALL WRITINGS CONTAINED HEREIN/AMENDMENTS

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any parties hereto.

City and Agency may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind the parties or their respective delegates.

11. VENUE

The parties shall bring any litigation arising out of or relating to this Agreement only before the Snohomish County Superior Court.

12. COUNTERPARTS

Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties and conclusive proof of such agreement. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

CITY OF EVERETT

Northshore Parks and Recreation Service Area

WASHINGTON

Signature: *Thomas E Agnew*
Thomas E Agnew (Nov 30, 2021 22:00 PST)

Typed/Printed Name: Thomas E Agnew

Title: Chair

By: _____

Cassie Franklin, Mayor

Nov 30, 2021

Date

Date

ATTEST:

APPROVED AS TO FORM:

Sharon Fuller, City Clerk

David C. Hall, City Attorney

Date: _____

Date: _____