

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF NORTH BEND AND WASHINGTON STATE
DEPARTMENT OF NATURAL RESOURCES FOR THE
IMPLEMENTATION AND MANAGEMENT OF THE RCO WWRP
GRANT FOR IMPROVEMENTS ALONG THE MIDDLE FORK OF THE
SNOQUALMIE RIVER**

DNR AGREEMENT NUMBER: 93-100446

THIS AGREEMENT is entered into this ____ day of _____ 2020, between the City of North Bend (the “City”) and the Washington State Department of Natural Resources (DNR).

I. RECITALS

WHEREAS, the City is a municipal corporation of the State of Washington, organized and operating under the Optional Municipal Code, RCW Chapter 35A; and

WHEREAS, DNR is a department of the State of Washington, organized and operating under RCW 43.30 and 79; and

WHEREAS, this Agreement is made under the authority of the Interlocal Cooperation Act, RCW Chapter 39.34, and RCW 79.10.130; and

WHEREAS, the City and DNR are stewards of public lands in the City (City of North Bend) and immediately adjacent to the City (DNR), and the parties recognize that through cooperation, these publicly-held lands can be used to meet broader community needs for recreation and open space than either party can provide separately; and

WHEREAS, the City along with King County was a secondary sponsor on a WA Recreation and Conservation Office (RCO) – Washington Wildlife and Recreation Program (WWRP) Water Access development grant entitled, “Middle Fork Snoqualmie River Access Dev Phase I” (the RCO Grant), that DNR applied for and was awarded that improves river access along the Middle Fork of the Snoqualmie River; and

WHEREAS, a local developer Shelter Holdings (the ‘Developer’) is dedicating land for a new park within North Bend that will be named Dahlgren Family Park and paying Park Impact Fees in conjunction with a multi-family development project (the ‘Shelter Holdings Dahlgren Apartment Project’); and

WHEREAS, the Park Impact Fees from the Dahlgren Apartment Project will be used to construct the improvements for proposed Dahlgren Family Park as shown on Worksite 1, Exhibit A2, and Exhibits B1-B3, attached hereto and incorporated by this reference (Dahlgren Park Improvements); and

WHEREAS, the City will be leveraging the monies spent to construct the Dahlgren Family Park as match funds for the RCO Grant that DNR will be administering in order to receive additional state funds to make improvements for other access points along the Middle Fork of the Snoqualmie River; and

NOW, THEREFORE, it is agreed by and between the City and DNR as follows:

II. AGREEMENT

1. Scope and Purpose.

- a. The Parties are entering into this Agreement to establish a framework for implementing the RCO Grant to construct new and improve existing river adjacent facilities along the Middle Fork Snoqualmie River. Exhibit A1-A3 shows all of the worksites that are being improved as part of the RCO Grant.
- b. DNR will be responsible for Administering the RCO grant, including coordinating with the City and King County, distributing grant funds, monitoring the overall progress of work at all of the sites to ensure compliance with grant deliverables, and submitting progress reports, documentation of match, and reimbursement billings to RCO.
- c. DNR will be responsible for completing the improvements on the upstream sites (Worksite 2 on Exhibit A3, including Mine Creek, Champion Beach and Granite Creek Flats), including project management, contracting, obtaining necessary permits, and all other items necessary to complete the Project for use by the public.
- d. DNR will be responsible for completing all of the improvements at Dahlgren Family Park (Worksite 1, Exhibit A2 and Exhibits B1-B3), on behalf of the City, using plans provided by the developer, including project management, contracting, obtaining permits, and all other items necessary to complete the Project for use by the Public. DNR will be responsible for coordinating with the Developer, who is constructing the access drive, frontage improvements and water and sewer lines, and with King County, which is completing the improvements at Tanner Landing Park as part of this grant. See Exhibit B1-B3 for Dahlgren Family Park Scope of Work, Cost Estimate and Permit Drawings.
- e. The City will be responsible for collecting the Park Impact Fees from the Developer and upon such collection making them available for use by DNR to construct the Dahlgren Family Park. The City's obligation under this Agreement is subject to the Developer paying the park impact fees to the City and the City makes no representation or warranty regarding the same. The

total amount of Park Impact Fees due for the 212 units proposed for the Dahlgren Apartments is nine hundred sixty two thousand four hundred and eighty dollars (\$962,480). DNR will use these impact fee funds and additional funds from the grant to complete the proposed improvements. See Exhibit B for proposed Dahlgren Park Plan and associated construction cost estimate with prevailing wage rates. The City will obtain the final construction drawings and specifications for Dahlgren Family Park from the Developer and provide them to DNR to use for construction.

2. Payment. Upon receipt the park impact fees from the Developer, the City will pay DNR a total of not more than nine hundred sixty two thousand four hundred and eighty dollars (\$962,480) from the Park Impact Fees associated with the Dahlgren Apartments. DNR will use the funds to construct Dahlgren Family Park as described in this agreement and for no other purpose.
3. Billing Procedure. DNR shall submit periodic invoices for this project. DNR will receive payment on a reimbursable basis, upon receipt of invoices of costs incurred and authorized. Invoices to include back-up data such as record of contract payments, receipts, payrolls, and so on. Payment to DNR for approved and completed work will be made by warrant or account transfer within 30 days of receiving the invoice. When the contract expires, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.
4. Independent Contractor. Each party to this Agreement is an independent contractor with respect to the subject matter herein.
5. Indemnification.

Both parties' duties to indemnify, defend, and hold harmless described below are only effective from the beginning of this agreement through to the end of construction.

- a. The City shall indemnify, defend, and hold harmless DNR, its officers, officials, agents, and employees from and against any and all liability arising from injury or death to persons or damage to property resulting in whole or in part from negligent acts or omissions of the City, its agents, servants, officers, or employees, irrespective of whether in connection with such act or omission it is alleged or claimed that an act of DNR, its agents, or employees caused or contributed thereto. In the event that DNR shall elect to defend itself against any claim or suit arising from such injury, death, or damage, the City shall, in addition to indemnifying and holding DNR harmless from any liability, indemnify DNR for any and all expenses incurred by DNR in defending such claim or suit, including reasonable attorney's fees.
- b. DNR shall indemnify, defend, and hold harmless the City, its officers, officials, agents, and employees from and against any and all liability arising from injury

or death to persons or damage to property resulting in whole or in part from negligent acts or omissions of DNR, its agents, servants, officers, or employees, irrespective of whether in connection with such act or omission it is alleged or claimed that an act of the City, its agents, or employees caused or contributed thereto. In the event that the City shall elect to defend itself against any claim or suit arising from such injury, death, or damage, DNR shall, in addition to indemnifying and holding the City harmless from any liability, indemnify the City for any and all expenses incurred by the City in defending such claim or suit, including reasonable attorney's fees.

6. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provisions of this Agreement that prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.
7. Assignability. The rights, duties, and obligations of either party to this Agreement may not be assigned to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld.
8. No Third-Party Rights. Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of any nonperformance hereunder.
9. Entire Agreement and Modifications. This Agreement constitutes the entire Agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. No provision of this Agreement may be amended or modified except by written agreement signed by the parties.
10. Term and Termination. The term of this Agreement shall commence on the date first shown above and shall be in effect for a period of five years (5) years. This Agreement may be terminated by either party upon providing written notice to the other party at least thirty (30) days prior to the proposed termination date.
11. Filing with Auditor and Interlocal Cooperation Act Compliance. This Agreement shall be filed with the King County Auditor or listed by subject on the City's website or other electronically retrievable public source, pursuant to RCW 39.34.040. No separate legal entity has been created pursuant to this Agreement, and the City and DNR do not intend to jointly acquire or hold title to property the under the terms of this Agreement.
12. Insurance.

- a. The City shall maintain in full force throughout the duration of this Agreement comprehensive general liability insurance with a minimum coverage of \$1,000,000 per occurrence/aggregate for personal injury and property damage, and name DNR as an additional insured thereon. This requirement shall be deemed satisfied by evidence of the City's membership in a municipal self-insurance pool, including evidence of limits of coverage, exclusions, and limits of liability satisfactory to DNR.
 - b. The DNR is part of the State of Washington and protected by the State's self-insurance liability program as provided by Chapter 4.92.130.
13. Dispute Resolution. If a dispute arises between the parties concerning the performance of any provision of this Agreement or the interpretation thereof, the parties agree to follow the procedures set forth herein. It is the goal of the parties to resolve differences as early in this step-process as possible.
- a. Step One – Informal Discussions. Each party shall designate a representative, and the designated representatives shall meet and attempt to resolve the dispute. This step may involve more than one meeting.
 - b. Step Two – Written Notification and Resolution. If informal discussions are not successful, then the aggrieved party shall e-mail and mail, via certified mail, written notice of the dispute to the other party. The notice shall set forth the nature of the dispute and the desired outcome. A written response shall be provided by the recipient of the notice within ten (10) days' of receipt of the certified, mailed notice. The response to the notice shall include the respondent's version of the dispute and a proposed resolution. The parties shall then meet within ten (10) business days following respondent's answer to determine whether the dispute can be resolved amicably. If the dispute is amicably resolved, the parties shall sign a memorandum of understanding with regards thereto.
 - c. Step Three – Mediation. If the parties are unable to resolve their differences at Step Two, the parties will endeavor to settle the dispute by mediation under such mediation rules as shall be agreeable to the parties. Mediation shall commence, unless otherwise agreed, within thirty (30) days of a party's written request to the other party for mediation of a dispute. Any resolution of the dispute at this stage shall be reduced to writing and, if the resolution involves an interpretation of the Agreement herein, the Agreement herein shall be amended to include the interpretation.
14. Discrimination Prohibited. Neither party shall discriminate against any employee or any person seeking service under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, marital status, or the presence of any sensory, mental, or physical handicap.

15. Applicable Law, Venue, and Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event of any suit, arbitration, or other proceeding instituted to enforce any term of this Agreement, the venue shall be exclusively in the Superior Court for King County, Washington.
16. Administrators/Notices. The Administrators listed below, or their successors, shall be the persons responsible for administering this Agreement. The Administrators below, or their successors shall be the contact persons responsible for all notices and communications regarding the performance under this Agreement.

CITY OF NORTH BEND

WA STATE DEPARTMENT OF
NATURAL RESOURCES.

David Miller
Interim City Administrator
P.O. Box 896
North Bend, WA 98045

Laura Cooper
Parks Planner, SPS Region
950 Farman Avenue N
Enumclaw, WA 98022

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below.

CITY OF NORTH BEND

WA STATE DEPARTMENT OF NATURAL
RESOURCES.

By: _____
Rob McFarland, Mayor

By: _____

Date: _____

Date: _____

Attest: _____
Susie Oppedal, City Clerk

Attest: _____

Approved as to Form:

Approved as to Form:

Michael R. Kenyon, City Attorney
