

INTERAGENCY AGREEMENT BETWEEN
PORT OF EVERETT, WASHINGTON

AND

WHATCOM TRANSPORTATION AUTHORITY (WTA), WASHINGTON

This Agreement is made and entered into by and between the **Port of Everett**, Washington, hereinafter referred to as "Port", and the Whatcom Transportation Authority hereafter referred to as "WTA", each party having been duly organized and now existing under the laws of the State of Washington.

WHEREAS, the Port has entered into a job order contract with FORMA Construction Company ("FORMA ") as authorized by Chapter 39.10 RCW, Alternative Public Works Contracting Procedures, titled "Agreement for Job Order Contracting – General Construction Services Project No. AD-GN-2017-01" dated March 20, 2018 ("FORMA Contract"); and

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

WHEREAS, the Port desires to enter into this Agreement with WTA to allow the WTA to utilize the terms and conditions of the FORMA 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

The Port shall pursue a no cost change orders to the FORMA Contract requesting that FORMA provide the WTA with job order construction services on WTA facilities directly to the WTA on the same terms and conditions of the FORMA Contract, except that the obligations owed by FORMA to the Port under such agreement will be owed by FORMA to the WTA, including but not limited to obligations to provide performance and payment bonds for work performed and insurance endorsements that name the WTA as additional insured. A true and correct copy of the FORMA Contract is attached hereto as Attachment "A". FORMA shall directly invoice the WTA for any and all such work provided, and all work orders shall state "All work described herein provided directly to the WTA of Kirkland by FORMA are subject to the terms and conditions of the 'Agreement for Job Order Contracting – General Construction Services Project No. AD-GN-2017-01' contract, dated March 30, 2018." The Port is not a party to, nor responsible for, performance of or payment for the work described in this invoice." The WTA shall issue all job orders and perform all fiscal and program responsibilities for the projects to be identified by the WTA.

The WTA shall not issue any work orders under the FORMA Contract until such changes have been

executed. In the event that the changes are not executed, this Agreement shall terminate, and neither party shall bear any additional obligations or liabilities hereunder, and each party shall bear its own costs associated with the Agreement

2. TERMS AND CONDITIONS

The WTA and Port agree that any work performed for the WTA by FORMA and its respective subcontractors under this Agreement shall be conducted in accordance with the provisions of the FORMA Contract. Insurance, Indemnification and Performance/Payment bonds as specified in the FORMA Contract shall inure to the benefit of the WTA on work orders issued by the WTA.

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 March 30, 2020 unless mutually changed by Amendment to this Agreement.

4. COMPENSATION; PAYMENT PROCEDURE

The total value of all work orders issued by the the WTA to FORMA shall not exceed \$300,000. FORMA shall directly invoice the WTA and the WTA shall directly pay FORMA pursuant to the payment and compensation terms identified within the FORMA Contract, respectively.

5. RECORDS MAINTENANCE

Port, WTA, FORMA 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). Unless an applicable exception to public review or a privilege applies, these records shall be subject to inspection, review, or audit by personnel of both parties' other personnel duly authorized by either party, or the Washington State Auditor.

6. CONTRACT MANAGEMENT

(a) Maija Lampinen will be the Port Representative for all communications regarding this Agreement. The Port Representative shall be responsible for monitoring the performance of this Agreement and fulfilling the Port's responsibilities as addressed herein.

(b) Magan Waltari will be the WTA Representative for all communications regarding this Agreement. The WTA Representative shall be responsible for monitoring the performance of this Agreement and fulfilling WTA's responsibilities as addressed herein.

(c) Lori Nicholson shall serve as the FORMA Representative for all communications regarding the job order construction services as addressed herein.

7. INDEMNIFICATION AND HOLD HARMLESS

The WTA specifically acknowledges that the Port shall have no liability or responsibility for the performance of FORMA with respect to WTA job orders. The WTA shall defend and hold the Port harmless from any and all claims, suits, losses, costs (including attorney's fees), and/or damages of any kind whatsoever arising out of or in any way resulting from the WTA's issuance of job orders and performance by any party pursuant to same facilitated by this Agreement. The Port makes no

representations or warranties of any kind, including, without limitation regarding the contractors, performance, or terms and conditions of the FORMA Contract.

8. AMENDMENTS TO AGREEMENT

Port and WTA 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.

9. TERMINATION

Either party may terminate this Agreement upon thirty (30) days written notification. If this 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

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.

11. 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. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The Port shall determine legibility and acceptability for public record purposes. 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.

PORT OF EVERETT

By: 

WHATCOM TRANSPORTATION AUTHORITY

By: 

Approved as to form:

By: 

Title: PORT ATTORNEY

Approved as to form:

By: 

Title: Procurement & Grants
Coordinator