



Project title: Grant agreement with Snohomish County for Small Capital Projects Partnership Project (SCPP) Grant

City Council Agenda Item Cover Sheet

Council Bill #

Consideration: SCPP Grant

Agenda dates requested:

1/13/2021

Project: Wood Creek Open Space Planning

Partner/Supplier: Forterra NW, Snohomish County

Location: Wood Creek

Briefing

Preceding action: None

Proposed action

Fund: Fund 401 – Water/Sewer Utility

Consent 1/13/21

Action

Ordinance

Public hearing

Yes No

Budget amendment:

Yes No

PowerPoint presentation:

Yes No

Attachments:

Proposed Agreement

Department(s) involved:

Real Property, Public Works,
Legal, Administration

Contact person:

Paul McKee

Phone number:

425-257-8867

Email:

pmckee@everettwa.gov

Fiscal summary statement:

The City applied for and was successful in obtaining a grant in the amount of \$10,000 from the Snohomish County Small Capital Projects Partnership Project (SCPP) Grant program.

The funds will be used for used for the Wood Creek Open Space Planning project.

The budget for the project initially includes \$20,000, \$10,000 from the SCPP Grant and \$10,000 in matching funds from Fund 401 funded from existing appropriations. Subsequent costs may include a Geotechnical report estimated to be \$7,500 and a real estate appraisal estimated to be \$4,000.

Project summary statement:

The Wood Creek Open Space Planning Project is a multi-faceted undertaking which will support planning, acquisition and rehabilitation activities for a large, surplus Utility-owned urban parcel that has the potential to accomplish many positive outcomes including, but not limited to, expanding open space access to local residents, improve regional trail connectivity, protect water quality, and enhance other environmental services.

Forterra NW has been identified as a potential consulting partner to assist in this effort should this action be approved.

Initialed by:

Department head

Administration

Council President

Recommendation (exact action requested of Council):

Authorize the Mayor to sign the SCPP Grant Agreement in the form generally provided with Snohomish County for the funding of the Wood Creek Open Space Planning.

AGENCY: City of Everett
CONTACT PERSON: Paul McKee
ADDRESS: 3200 Cedar
Everett, WA 98201
TELEPHONE/FAX NUMBER: 425.257-8800

COUNTY DEPT: Snohomish County Council
DEPT. CONTACT PERSON: Jim Martin
TELEPHONE/FAX NUMBER: 425-388-6250/425-388-3496
PROJECT: Wood Creek Open Space Planning
AMOUNT: \$10,000.00
FUND SOURCE: 191-5167005204
CONTRACT DURATION: Through December 31, 2021

AGREEMENT FOR SMALL CAPITAL PROJECTS PARTNERSHIP PROJECT

THIS AGREEMENT (the "Agreement") is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County"), and the City of Everett, a municipal corporation in the State of Washington (the "Agency").

RECITALS

WHEREAS, RCW 82.46.035 authorized counties planning under the Growth Management Act the authority to levy an additional quarter percent tax on all sales of real estate; and

WHEREAS, by that legislation, this additional quarter percent tax on sales of real estate must be used solely on capital projects that are listed in a capital facilities plan; and

WHEREAS, capital projects are defined as public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, domestic water systems, storm and sanitary sewer systems; and planning, construction, reconstruction, repair, rehabilitation, or improvement of parks; and

WHEREAS, by Ordinance No. 14-125, adopted December 17, 2014, the Snohomish County Council provided funding within the Real Estate Excise Tax Fund for an application process for a Small Capital Projects Partnership (SCPP) grant program; and

WHEREAS, applications for the SCPP grants were received when due, October 31, 2020; and

WHEREAS, a review team evaluated and ranked the applications and made recommendations to County Council in November,2020; and

WHEREAS, the Agency's project was one of five projects recommended by the review team and authorized by the County Council for funding by Motion 20-486 approved on November 16, 2020;

WHEREAS, the County determined that the Agency's project is eligible for the SCPP grant funding; and

NOW, THEREFORE, in consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. **Purpose of Agreement; Project Scope.** The purpose of this Agreement is to provide funding for the Agency's Wood Creek Open Space Planning.
2. **Term; Time of Performance.** This Agreement shall be effective on the date on which it has been executed by authorized representatives of both parties and shall expire on December 31, 2021. The Agency shall commence Project work immediately and complete the Project work required by this Agreement no later than December 31, 2021.
3. **Reimbursement of Project Expenses.** Subject to Section 6 hereof and upon the completion of the Project to the satisfaction of the County, the County will reimburse the Agency for Project expenses as set forth in the Project budget in Appendix A. The Agency shall submit a request for reimbursement for Project expenses supported by detailed statements, including invoices from third parties incident to those Project expenses, if any, indicating Project work performed as appropriate and consistent with the schedule of Project work outlined in Appendix A. Total requests for reimbursement for this Project shall not exceed \$10,000.00 (the "Contract Maximum").
4. **Direction and Control.** The Agency agrees that it will perform the Project work under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. The parties agree that neither the Agency nor its employees are entitled to any benefits or rights enjoyed by employees of the County. The Agency specifically has the right to direct and control Agency's own activities in performing the Project work in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance. Nothing in this Agreement shall be construed to render the parties partners or joint venturers.
5. **Changes.** No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are

required for the execution of this Agreement.

- 6. Indemnifications and Hold Harmless**—Except for the sole negligence of the County, the Agency shall indemnify and hold harmless the County, its officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature which are in any way resulting from Agency’s activities and/or services associated with this Agreement. The duty to indemnify and hold the County harmless shall not extend to any claim regarding the City’s eligibility to receive grant funding, unless such claim arises out of a misrepresentation by the City to the County that the County reasonable relied upon to its detriment.

In the event the County incurs attorney fees and/or costs in the defense of claims under this provision such attorney fees and costs shall be recoverable from the Agency. In addition, Snohomish County shall be entitled to recover from the Agency its attorney fees, and costs incurred to enforce the provisions of this section.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

7. Insurance; No Limitation.

The Agency shall maintain its self-insurance program and will provide evidence thereof at the request of the County.”

Subcontractors:

The Agency shall include all Subcontractors as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Agreement not provided by the Agency, shall be subject to all of the requirements stated herein.

- 8. Non-Discrimination.** It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington’s Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance,

Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Agency shall comply with Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Agency of the Agency's compliance with the requirements of Chapter 2.460 SCC. If the Agency is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Agency's obligations under other federal, state, or local laws against discrimination.

9. Compliance with Laws. The Agency shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.

10. Termination.

a. If the Agency breaches any of its obligations hereunder, and fails to cure the same within five (5) business days of written notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay the Agency only for the costs of the Project work accepted by the County for reimbursement in accordance with Sections 3 and 8 hereof.

b. The County may terminate this Agreement upon thirty (30) calendar days' written notice to the Agency for any reason other than stated in paragraph a of this Section 14, in which case the County shall pay the Agency for all costs incurred by the Agency in performing this Agreement prior to the date of termination. Payment shall be made in accordance with Sections 3 and 8 hereof.

c. Termination shall not affect the rights of the County under any other section or paragraph herein.

11. Notices. All notices and other communications shall be in writing and shall be sufficiently given and shall be deemed given on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County: Snohomish County Council
 3000 Rockefeller Avenue, M/S 610
 Everett, Washington 98201
 Attention: Jim Martin
 Legislative Analyst

If to the Agency: City of Everett

3200 Cedar
Everett, WA 98201
Attention: Paul McKee

The County or the Agency may, by notice to the other given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

- 12 Waiver.** Failure of the County to exercise any rights or remedies under this Agreement shall not be a waiver of any rights or remedies by the County and shall not prevent the County from pursuing those rights or remedies at any future time.
- 13. Nonassignment.** The Agency shall not subcontract, assign or delegate any of the rights, duties or obligations covered by this Agreement without the prior express written consent of the County.
- 14. Conflicts Between Attachments and Text.** Should any conflicts exist between any attached exhibit and schedule and the text of this Agreement, the text shall prevail.
- 15. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Washington. Any lawsuit regarding this Agreement must be brought in Snohomish County, Washington.
- 16. Authority.** Each signatory to this Agreement represents that he or she has full and sufficient authority to execute this Agreement on behalf of the County or the Agency, as the case may be, and that upon execution of this Agreement it shall constitute a binding obligation of the County or the Agency, as the case may be.
- 17. Severability.** Should any clause, phrase, sentence or paragraph of this Agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.
- 18. Complete Agreement.** This Agreement constitutes the entire understanding of the parties. Any written or verbal agreements that are not set forth herein or incorporated herein by reference are expressly excluded.

SNOHOMISH COUNTY:

AGENCY:

County Council

Mayor

Date: _____

Date: _____

Approved as to form only:

Counsel to the Agency Date

APPENDIX A
SCOPE OF WORK
AND PROJECT BUDGET

AGENCY: City of Everett

PROJECT: Wood Creek Open Space Planning

SCOPE OF WORK

1. The Agency will be reimbursed by the County for Project work, including eligible expenses incurred in executing the Project, pursuant to the Agreement in an amount not to exceed the Contract Maximum of \$10,000.00.

The Agency shall support planning, acquisition and rehabilitation activities for a large, urban parcel that has the potential to expand open space access to local residents, improve regional trail connectivity, and become a park.

Expenses eligible for reimbursement under the Agreement are defined as those listed in the 'COUNTY' line of the Project Budget below and, to the extent not inconsistent with this Appendix A. Invoices submitted to the County by the Agency will include itemized invoices from third parties, if any, for all eligible expenditures for which the Agency seeks reimbursement. In order to ensure timely closeout of the Project, the Agency shall submit its final invoice to the County no later than thirty (30) calendar days after completion of the Project work to be reimbursed pursuant to this Agreement, PROVIDED THAT, in no event shall billings submitted after that date to be paid by the County and PROVIDED FURTHER, that the aggregate of all billings submitted by the Agency and paid by the County pursuant to this Agreement shall not exceed the Contract Maximum of \$10,000.00.