



**LIMITED (SMALL WORKS) PUBLIC WORKS CONTRACT #2024-063**

THIS LIMITED (SMALL WORKS) PUBLIC WORKS CONTRACT, which is pursuant to RCW 39.04.155(3), is dated and effective as of the date of last signature below and is by and between the City of Everett, a Washington municipal corporation (the “City”), and the Contractor shown below in the Basic Provisions.

1. Basic Provisions:

<b>Contractor</b>	Lionheart Concrete
	1304 Uplands Drive
	Camano Island, WA 98282
	info@lionheartconcrete.com
<b>City Project Manager</b>	Brad Chenoweth
	City of Everett – Parks and Facilities Department
	802 E Mukilteo Blvd Everett, WA 98203
	bchenoweth@everettwa.gov
<b>Contract Documents</b>	The Contract contains and incorporates the following (the “Contract Documents”): this contract document, all provisions required by law, change orders, and Contractor’s proposal/quotation to the extent such document is attached hereto, in accordance with Section 2.A below. No Contractor-provided document is part of this Contract unless it is attached.
<b>Project</b>	The Contractor will furnish all labor, tools, materials, equipment, and supplies required to complete all work as set forth in the Contract Documents. The entire work set forth in the Contract Documents is referred to herein as either the “Work” or the “Project.”  A brief (and not necessarily complete) description of the Project is follows: Install concrete pads to replacement current disc golf course mats at TA Sullivan Park.
<b>Contract Time</b>	The Project shall be physically complete in all respects within <b>90</b> calendar days from the date of issuance of a Notice to Proceed. The Contractor shall not start the Work until receipt of Notice to Proceed from the City. If a purchase order is issued for the Work, it is only a Notice to Proceed. The purchase order’s pre-printed

	terms and conditions are not part of the Contract
<b>Contract Price</b>	The amount of this Contract is the Contract Price, which is \$22,617.42. The basis for final payment will be the actual amount of Work performed in accordance with the Contract Documents. In no event shall the total amount paid to Contractor exceed the Contract Price unless the Contract amount has been increased by one or more change orders signed by the City.
<b>Contractor Insurance Contact Information</b>	Sarah King
	425-582-9037
	sarahk@firstmarkinsurance.com

2. Contract Procedures

- A. Interpretation of Contract Documents. A quotation/proposal or any other document provided by Contractor attached to this contract document is part of this Contract solely to the extent that it describes the Work, the Work schedule, and the amounts or rates to be paid for such Work. Contractor expressly agrees that no terms or conditions from such an attached document are incorporated or included into this Contract. In the event of difference or conflict between an attached Contractor-provided document and other parts of the Contract, Contractor shall be bound by whichever is more stringent on Contractor.
- B. Safety. The Contractor shall take all necessary precautions for the safety of employees on the worksite and shall comply with all applicable provisions of federal, state, and local regulations, ordinances, and codes. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against known or unusual hazards.
- C. Correction of Defects/Warranty. If, during the course of the Contract, the Work rendered does not meet the requirements set forth in the Contract Documents, the Contractor shall correct or modify the Work to comply with the requirements of the Contract Documents. The City shall have the right to withhold payment for such Work until it meets the requirements of the Contract Documents. In addition, the Contractor shall be responsible for correcting all defects in the Work discovered within one year after the date the completion of the Work. If a longer warranty period is specified elsewhere in the Contract Documents, then that longer period applies. All warranties in the Contract Documents are cumulative; if warranties contained in the Contract Documents are different or conflict with each other, then the most stringent on the Contractor applies.

D. Change Orders.

1. The City's Project Manager reserves the right to change the Work at any time. This may be done only in writing, through field directives, or otherwise. Such changes shall not invalidate the Contract, and the Contractor agrees to perform the Work as changed. The Contractor shall not proceed with a change to the Work without a written directive from the City's Project Manager.
2. Changes to the Work may result in an increase or decrease in Contract Price or Contract Time. If the Contractor and the City agree on changes to Contract Price or Contract Time, the Contractor and the City shall execute an agreed change order. However, if the Contractor and the City do not agree, the City may, in its sole discretion, issue a unilateral change order changing the scope of Work and making any adjustments to the Contract Price and Contract Time in such amount and for such time as the City thinks appropriate. Any Contractor contract claim arising from such a unilateral change order must comply with contract claims provisions set forth in the Contract Documents. The Mayor will sign all change orders on behalf of the City.
3. As directed in writing by the City's Project Manager, minor changes to the Work may proceed prior to execution of a change order. Substantial changes in the Work will often be negotiated and a change order executed before the City directs the Contractor to proceed with the change.

E. Contract Claims. The Contractor shall provide written notice to the City of any contract claim against the City relating to differing site conditions, protests, work orders, revision of work orders, damages, expenses, costs, extra work, or anything else arising out of this Contract. To the maximum extent allowed by law, a contract claim is forever waived if such notice is not delivered to the City by the earlier of (A) the date that is thirty (30) days after the discovery of the basis of such contract claim or (B) the date that is thirty (30) days after completion of the Work at issue in the contract claim.

F. Subcontractor Responsibility.

The Contractor must obtain the written consent of the City's Project Manager prior to entering into any subcontract under this contract. The Contractor shall include the language of this section in each of its first-tier subcontracts and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier.

At the time of the execution of any subcontract, the Contractor shall verify that each of its first-tier subcontractors meets the following bidder responsibility criteria by requiring each subcontractor to:

- (1) Provide a current certificate of registration in compliance with chapter 18.27 RCW, as amended, which must be in effect at the time of quote submittal;
- (2) Provide a current Washington Unified Business Identifier (UBI) number;
- (3) Provide proof of Industrial Insurance (worker's compensation) coverage for the bidder's employees working in Washington, as required in Title 51 RCW, or provide a signed certification that such insurance is not required;
- (4) Provide a current Washington Employment Security Department number, as required in Title 50 RCW, or provide a signed certification that such number is not required;
- (5) Provide a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW or provide a signed certification that such number is not required;
- (6) Provide an electrical contractor license, if required by Chapter 19.28 RCW;
- (7) Provide an elevator contractor license, if required by Chapter 70.87 RCW; and
- (8) Provide a signed certification that the subcontractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

3. Indemnification/Waiver of Industrial Insurance Immunity (RCW 4.24.115).

- A. Except as otherwise provided in this section, the Contractor hereby agrees to save, hold harmless, defend, and indemnify the City, its officers, employees, and agents from any and all loss, claims, demands, suits, damage, or liability of any kind whatsoever, whether or not reduced to judgment or arbitration award, in connection with, or arising out of, this Contract, or resulting from Contractor's (or its subcontractor's or supplier's) performance of, or failure to perform, its express and implied obligations under the Contract. Contractor shall pay any judgment that may be obtained against the City, its officers, employees, agents, or third persons in such suit. The Contractor's obligations under this section shall not apply to loss, claims, demands, suits, damage, or liability caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular loss, claim, demand, suit, damage, or liability, and (2) such loss, claim, demand, suit, damage, or liability is caused by or results from the concurrent negligence of (a) the Contractor, its employees, subcontractors/subconsultants or agents and (b) the City or its agents or employees, then the Contractor's obligations under this section shall apply only to the extent of Contractor's negligence. The City shall give Contractor reasonable notice of such claim. The City retains the right to approve claims investigation and counsel assigned to said claim, and all investigation and legal work regarding said claim shall be performed under a fiduciary relationship to the City. This section survives any termination, completion or expiration of this Contract.

- B. Contractor waives any right of contribution against the City. It is agreed and mutually negotiated that in any and all claims against the City, its agents or employees, the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts any of them may be liable, the defense and indemnification obligations hereunder shall not be limited in any way by any limitation on the amount of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under industrial worker's compensation acts, disability benefit acts, or other employees' benefit acts. Solely for the purpose of indemnification and defense as provided in this Contract, the Contractor specifically waives any immunity under the State Industrial Insurance Law, Title 51 RCW. The Contractor expressly acknowledges that this waiver of immunity under Title 51 RCW was the subject of mutual negotiation and was specifically entered into pursuant to the provisions of RCW 4.24.115.

4. Prevailing Wages (Chapter 39.12 RCW).

- A. Wages to be Paid. The wage rates to be paid to all laborers, workers, and mechanics who perform any part of this Contract shall not be less than the prevailing wage rates as required by Chapter 39.12 RCW. This requirement applies to laborers, workers, and mechanics whether they are employed by the Contractor, subcontractors, sub-subcontractors, or any other person who performs a portion of the Work contemplated by this Contract. The prevailing wage rates in effect on the Contract effective date are the prevailing wage rates that apply to the Project. Prevailing wage rates applicable to the Project, which is located in Snohomish County, may be found at the following website address for the Department of Labor & Industries: <https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>. A copy of the applicable prevailing wage rates is also available for viewing at the City of Everett's Procurement Office, 2930 Wetmore Ave, Everett, WA 98201. Upon request, the City of Everett will mail a hard copy of the applicable prevailing wages for the Project.
- B. Intents and Affidavits. Contractor shall comply with RCW 39.12.040. The Project is considered a public work that requires each and every contractor, sub-contractor, and lower-tier contractors working on the Project file the Statement of Intent to Pay Prevailing Wages (Intent), and Affidavit of Wages Paid (Affidavit) forms. These persons are responsible for filing all forms with the Department of Labor and Industries (L&I) and are responsible for paying all filing fees. These forms are required regardless of the dollar amount. The Intent form is filed immediately after the contract is awarded and before work begins, if possible. The City shall not make any payments until Contractors have submitted an Intent form that L&I has approved. The Affidavit form is not filed until after all Work has been physically completed and accepted by the City. The City will not release payment until each and every contractor, sub-contractor, and lower-tier contractors have submitted an Affidavit of Wages that L&I has approved. Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid must be filed electronically with the Department of Labor and Industries. Information and be found at: <https://lni.wa.gov/licensing-permits/public-works-projects/contractors-employers/>.

5. Everett Business License (EMC 3.19.025). The Contractor must maintain a City of Everett Business License.
6. General Compliance with Law and Equal Opportunity. The Contractor shall comply with all federal, state, and local laws and regulations applicable to the work to be done under this Contract. Without limiting the foregoing, Contractor shall not discriminate against any employee, applicant for employment, or other person on the basis of race, color, religion, sex, age, disability, marital state, national origin, or other circumstance prohibited by applicable federal, state, or local law or ordinance. The Contractor shall comply with and shall not violate any applicable provisions of Chapter 49.60 RCW, Title VI of the Civil Rights Act of 1964, and all applicable federal, state, or local law or ordinance regarding non-discrimination.
7. Minority Business Certification. Contractor agrees that the Contractor shall actively solicit the employment of minority group members. Contractor further agrees that the Contractor shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. Contractor shall furnish evidence of the Contractor's compliance with these requirements of minority employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. The Contractor shall be required to submit evidence of compliance with this section as part of the bid. As used in this section, the term "minority business" means a business at least fifty-one percent (51%) of which is owned by minority group members. Minority group members include, but are not limited to, African-Americans, Women, Native Americans, Asian/Pacific Islander-Americans, and Hispanic-Americans.

By signing this Contract, the Contractor certifies that it actively solicits the employment of minority group members. The Contractor further certifies that, if this project includes suppliers or subcontractors, Contractor actively solicited bids for the subcontracting of goods or services from qualified minority businesses. Contractor will provide additional evidence of such solicitation if requested by the City.

8. Insurance Requirements.
  - A. The Contractor shall comply with the following conditions and procure and keep in force during the term of this Contract, at the Contractor's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A-" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City.
    1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence.
    2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate.

3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile.
    - B. The above liability policies shall be primary as to the City and shall contain a provision that the policy shall not be canceled or materially changed without thirty (30) days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Contractor to furnish the required insurance during the term of this Contract.
    - C. Prior to the Contractor performing any Work, Contractor shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the required insurance. The Contractor shall provide the City with endorsement(s) for the CGL and auto policies naming the City of Everett, its officers, employees, and agents as Additional Insureds Receipt by the City of any certificate showing less coverage than required is not a waiver of the Contractor's obligations to fulfill these requirements.
    - D. The Contractor shall require subcontractors to provide coverage that complies with the requirements stated herein.
9. Independent Contractor. Contractor is and shall be at all times during the term of this Contract an independent contractor and not an employee of the City. Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Contract, shall be considered employees of the Contractor only and not of the City.
10. Contract Termination.
  - A. Termination for Default. The City may terminate the Contract upon written notice to Contractor and its surety whenever the Contractor is deemed to be in default or fails to fulfill, in a timely and proper manner, one or more Contract obligations or is in violation of any provisions or covenants of the Contract. Termination shall be effective upon receipt of such notice by the Contractor.
  - B. Termination for Convenience. Without prejudice to any other remedy it may have under law or and/or the provisions of the Contract, the City may terminate this Contract for convenience, with or without cause, in whole or in part, at any time by giving written notice to the Contractor. Termination will be effective upon receipt of such notice by the Contractor. The Contractor shall immediately discontinue Work and take all reasonable steps with its suppliers and subcontractors to minimize cancellation charges and other costs. After termination for convenience, payment to the Contractor shall only be for Work completed through the termination date. To the extent not paid for by the Contract Price for completed Work, the City will pay as part of an adjustment of Contract Price those direct costs necessarily and actually incurred by the Contractor in reasonable anticipation of performing the Work that has been deleted or terminated. No claim for damages of any kind for loss of anticipated profits or consequential damages will be allowed because of termination for convenience. In no event will the total payment to the Contractor exceed the total Contract Price as modified by

approved change orders less those amounts paid to the Contractor before the effective date of the termination

11. Other Provisions.


- A. Any waiver by the City or the breach of any provision of this Contract by the Contractor will not operate or be construed as a waiver of any subsequent breach by the Contractor or prevent the City from enforcing any such provisions thereafter.
- B. This Contract may not be assigned by the Contractor without the written consent of the City, which consent may be withheld in the City's sole discretion.
- C. The Contract Documents contain the complete and integrated understanding and contract between the parties and supersede any understanding, agreement, or negotiation, whether oral or written, not set forth herein.
- D. Unless otherwise directed in writing by the City's Project Manager, notices to the City must be in writing and shall be delivered to the City's Project Manager postage prepaid or delivered by hand. Notices to the Contractor may be delivered to the Contractor by mail or email to the address for Contractor in the Basic Provisions or to any other address reasonably calculated to give the Contractor notice.
- E. This Contract may only be modified by a written change order executed in accordance with the Contract.
- F. Exclusive venue for any lawsuit arising out of this Contract shall be in the Superior Court of Snohomish County, Washington. The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Contract.

12. Effective Date. This Contract is effective as of the date of the Mayor's signature. The parties are signing this Contract with AdobeSign, and signatures with AdobeSign are fully binding.

IN WITNESS WHEREOF, the City and Contractor have executed this Contract.

**CITY OF EVERETT  
WASHINGTON**

**NIVEN ENTERPRISES LLC DBA LIONHEART CONCRETE**



\_\_\_\_\_  
Cassie Franklin, Mayor



Signature: \_\_\_\_\_

Name of Signer: Brad Niven

Signer's Email Address: lionheartconcrete@gmail.com

Title of Signer: Vice President

05/08/2024

\_\_\_\_\_  
Date

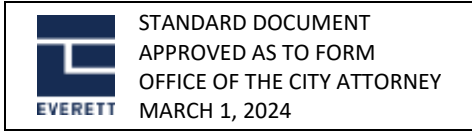


ATTEST



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Office of the City Clerk













# 2024-063 TA Sullivan Park Concrete Overlay\_4.30.24\_SD1

Final Audit Report

2024-05-08


Created:	2024-05-08
By:	Marista Jorve (mjorve@everettwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAigPFnFuhaAjY7qOLNWL_hUsojX8jzal-

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 Agreement completed.

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