

**CONSENT AND RATIFICATION AGREEMENT**  
**BETWEEN**  
**THE CITY OF TACOMA**  
**AND**  
**METRO PARKS TACOMA**

THIS AGREEMENT (the "**Agreement**") is entered into by and between the Metropolitan Park District of Tacoma ("**Metro Parks**"), and the City of Tacoma (the "**City**") (collectively the "**Parties**") for the purposes described herein.

WHEREAS in 1905, the federal government granted to the City fee ownership of Point Defiance Park legally described as follows:

Lots one, two and three of Section ten, and lots one, two, and three and the south one-half of the Southwest Quarter of Section fourteen, and lots one, two, three, four, five and six, and the east half of the Southeast Quarter, and the Northeast Quarter of the Northwest Quarter, and the Southwest Quarter of the Northeast Quarter of Section fifteen, Township twenty-one, North, Range two East, W.M., in the State of Washington;

and

WHEREAS in 1907, the State of Washington granted to the City fee ownership of the tidelands and shore lands abutting upon and contiguous to the Point Defiance Park lands transferred by the federal government (Point Defiance Park and the tidelands and shore lands are collectively referred to herein as the "**Park**"), and

WHEREAS the federal government and the State of Washington specified in the above grants that the Park only be used as a public park, and

WHEREAS in 1907 the qualified voters of the City of Tacoma approved the formation of the Metropolitan Park District of Tacoma, and

WHEREAS Metro Parks has historically managed and operated Point Defiance as a public park, and

WHEREAS Metro Parks has acquired additional properties adjoining the Park, including the breakwater peninsula property that is presently being developed for additional public park use and the Baker tract located adjacent to the southwest corner of the Park, and

WHEREAS since 2009, Metro Parks has leased part of the "triangle area" within the northeast corner of the Park to the Tacoma School District No. 10 ("**Tacoma Public**")

Schools”) for its operation of the Science and Math Institute (“SAMI”) a science and math-centered magnet high school, and

WHEREAS in 2016 Metro Parks successfully obtained voter approval for the issuance of \$200M in bonds, most of which is being used to construct significant improvements within the Park, including the triangle area, resulting in displacement of the physical location of SAMI, whereupon Tacoma Public Schools sought to relocate to another part of the Park, and

WHEREAS Metro Parks and Tacoma Public Schools have entered into an Amended and Restated Ground Lease dated July \_\_\_\_, 2017 (the “Lease”), providing for Tacoma Public School’s construction of a new learning center (the “Environmental Learning Center”) to replace SAMI and for joint use by Metro Parks, and

WHEREAS the Lease is for a term of 50 years, subject to Metro Parks’ right to terminate the Lease if necessary, and

WHEREAS it is anticipated that the Environmental Learning Center will be completed in October 2017 after which time Tacoma Public Schools will open the new center and commence operations, and

WHEREAS the City is willing to consent to and ratify the Lease so as to ensure that Tacoma Public Schools will be in a position to obtain use and occupancy of the Environmental Learning Center upon completion of the work in consideration of Metro Parks’ promises provided herein, and

WHEREAS Metro Parks is willing to undertake the duties and obligations provided herein in consideration of the City’s consent to and ratification of the Lease, and

WHEREAS the City and Metro Parks wish to explore the various methods of allocating and documenting each party’s respective responsibility relating to the control, management and operation of the Park, including the possible use of a master lease agreement and/or a future conveyance of the Park to Metro Parks;

NOW THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the parties hereto agree as follows:

1. Incorporation of Recitals. The City and Metro Parks acknowledge and agree that the above stated recitals are true and correct to the best of their knowledge and are incorporated by this reference as though fully set forth herein.

2. Obligation of City. A condition precedent to the obligations of Metro Parks as set forth in Section 3 below is the passage of a resolution by the City Council in substantially the form of Exhibit “A”, attached hereto and incorporated herein by this reference, which resolution shall ratify and consent to the Lease.

3. Obligations of Metro Parks. Upon satisfaction of the condition precedent as set forth in Section 2 above, Metro Parks agrees as follows:

a. Indemnity. Metro Parks releases and shall defend, indemnify and hold harmless the City and the City's officers (elected or appointed), employees, agents, and contractors (collectively, "City Indemnitees") from claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage to property, that arises out of (a) any activity, work, condition or thing permitted or suffered to exist or done at the Premises, as that term is defined in the Lease, or portion thereof; (b) the negligence or willful misconduct of any of Tacoma Public Schools or the Tacoma Public School's officers, directors, trustees, employees, agents, contractors, servants, guests, invitees or visitors (collectively, "The School District Parties"); (c) the negligence or willful misconduct of Metro Parks and any of Metro Parks' officers, directors, trustees, employees, agents, contractors, servants, guests, invitees or visitors (collectively, "Metro Parks Parties"); and (d) any breach or default by Tacoma Public Schools in the performance of any obligation on the School District's part to be performed under the Lease. This indemnity does not apply (i) to claims, suits, actions or liabilities to the extent they are caused by the negligent acts or omissions or willful misconduct of the City Indemnitees. In the absence of comparative or concurrent negligence on the part of any of the City Indemnitees, the foregoing indemnity shall also include reasonable costs, expenses and attorney's fees incurred in connection with any indemnified claim or incurred by City Indemnitees in successfully establishing the right to indemnity (including in any bankruptcy proceeding). Metro Parks' shall at the request of any of the City Indemnitees, assume the defense of any claim subject to this indemnity. The City agrees to cooperate fully with Metro Parks and the Metro Park's counsel in any matter where Metro Parks elects to defend, provided Metro Parks promptly reimburses the City for reasonable costs and expenses incurred in connection with its duty to cooperate. When the claim is caused by the joint negligence or willful misconduct of any of the City Indemnitees and Metro Parks Parties, Metro Park's duty to indemnify and defend shall be proportionate to Metro Parks' allocable share of any joint negligence or willful misconduct.

b. The obligations as set forth above shall remain in full force and effect during the term of the Lease and, upon expiration or termination of the Lease, until such time as Tacoma Public Schools shall no longer use and occupy the Park for operation of SAMI, or at such earlier time as may be mutually agreed to in writing by and between the Parties.

4. Good Faith Negotiations. The City and Metro Parks each agree to explore with the other and negotiate in good faith a mutually agreeable and beneficial method of allocating and documenting each party's respective responsibility relating to the control, management and operation of the Park, which may include a possible master lease agreement and/or a future conveyance of the Park to Metro Parks.

IN WITNESS WHEREOF, this Agreement shall be in force and effect on the date last signed below by either the Tacoma City Manager or Metro Parks Tacoma Executive Director.

**CITY OF TACOMA**

**METRO PARKS TACOMA**

\_\_\_\_\_  
Elizabeth A. Pauli, City Manager  
Date: \_\_\_\_\_

*Shon Sylvia*  
\_\_\_\_\_  
Shon Sylvia, Executive Director  
Date: 9-18-17

Approved as to Form:

\_\_\_\_\_  
Chief Deputy City Attorney

\_\_\_\_\_  
Saada Gegoux, Risk Manager

EXHIBIT "A"

*(Form of Resolution)*