

**INTERLOCAL AGREEMENT**  
**BETWEEN**  
**THE METROPOLITAN PARK DISTRICT OF TACOMA**  
**AND**  
**THE CITY OF TACOMA**  
**(FIFTY FOUR INCH STORMWATER PIPE)**

**THIS INTERLOCAL 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**, Metro Parks is a metropolitan park district operating under authority of Chapter 35.61 RCW and is a public agency authorized to enter into interlocal agreements with other public agencies pursuant to the Interlocal Cooperation Act, Ch. 39.34 RCW; and

**WHEREAS**, the City is a municipal corporation operating under the laws of the state of Washington as a first class city and is a public agency authorized to enter into interlocal agreements with other public agencies pursuant to the Interlocal Cooperation Act, Ch. 39.34 RCW; and

**WHEREAS**, the City manages and operates a stormwater utility, by and through its Environmental Services Department, and has planned to plug and abandon an existing stormwater pipe and construct a replacement fifty four inch pipe, within the triangle area of Point Defiance Park, to improve the stormwater conveyance from City’s North Tacoma watershed, all as described in the Permitted Plans as “Plug and Abandon Exiting 54” Pipe, 54 INCH RCP STORM SEWER PIPE, MH#22, MH#21, MH#20”; (the “**Stormwater Improvements Project**”), and

**WHEREAS**, Metro Parks entered into a general contractor / construction manager contract with its contractor (the “**Contractor**”) for the design and construction of certain park improvements and grading for a new trail within the triangle area of Point Defiance Park as part of the Point Defiance Park Waterfront Phase I Improvements that will require the removal and stockpiling of soils (the “**Park Improvements Project**”); and

**WHEREAS**, given the proximity of these projects to one another, it is preferred that Metro Parks include the Stormwater Improvements Project in its Park Improvements Project in order to achieve economies of scale, ensure overall project coordination and management, minimize impacts to the public and maximize public benefit and safety; and

**WHEREAS**, in order to achieve the cost savings and combined benefits, Metro Parks will manage and administer the Stormwater Improvements, including design and engineering, scheduling, and construction, and the City will reimburse Metro Parks for the City's equitable share of the Stormwater Improvement Project costs as provided herein; and

**WHEREAS**, the City and Metro Parks desire to enter into this Interlocal Agreement for the purposes set forth herein.

**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. Interlocal Cooperation Act Compliance. This is an Agreement entered into pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW. Its purpose is stated in Section 3. Its duration and method of termination is stated in Section 4. Except as otherwise specifically provided herein, each party shall bear its own costs and control its own manner of financing and of establishing and maintaining a budget for the activities contemplated herein. No separate entity is created and, except as otherwise provided in this Agreement, no real or personal property shall be acquired pursuant to this Agreement which will need to be disposed of upon partial or complete termination of this Agreement.
3. Purpose. The parties have entered into this Agreement for the purpose of joint and coordinated development and construction of the Stormwater Improvements Project. The parties have determined that having a single contractor and contract manager/administrator for the Stormwater Improvements Project and the Park Improvements Project will achieve the highest public benefit by reducing total project costs such as, staging, mobilization of equipment and crews, equipment rental, materials disposal and contract management costs. This Agreement establishes the terms and conditions upon which Metro Parks will undertake construction management and administration of the Stormwater Improvements Project.
4. Term and Termination. This Agreement shall be effective on the 21<sup>st</sup> day of August, 2017 (the "**Effective Date**") upon mutual execution by the Parties and shall remain in effect until completion of the Stormwater Improvements Project,

the City's acceptance of the Stormwater Improvements constructed and the City's payment of its final installment payment, at which time this Agreement shall expire. In the event that this Agreement is executed after the Effective Date, the City and Metro Parks agree that the Agreement shall have the same legal force and effect as though it had been executed on or before the Effective Date. Either party may terminate this Agreement prior to Metro Parks' issuance of a notice to proceed to its contractor, by giving notice to the other party twenty (20) days prior to the date of termination. If such notice is given, each party shall bear its own costs incurred pursuant to this Agreement.

5. City Contract Administrator. Craig May is designated as the "City Contract Administrator" who shall be responsible for administration of this Agreement on behalf of the City. The City Contract Administrator shall have authority to exercise all rights of the City set forth under this Agreement; provided that, any amendments to this Agreement that materially modify the terms and conditions hereof, shall be approved in the same manner as the approval of this Agreement. The City Contract Administrator may appoint a designee to act as the City Contract Administrator in the event of the absence of the City Contract Administrator.

6. Stormwater Improvements Project Plans; Permitting. The final plans that include the Stormwater Improvements Project are on file with the City under permit WO17-0002, which plans have been reviewed and are hereby permitted by the City and incorporated into this Agreement as though fully set forth herein (the "**Permitted Plans**").

7. Project Management/Administration.

7.1 Generally. The Stormwater Improvements Project will be performed as a part of Metro Parks' General Contractor / Construction Manager (GC/CM) contract which was approved for the design and construction of the Park Improvements. The Parties hereby agree that Metro Parks shall have sole responsibility for the Stormwater Improvements Project and Park Improvements Project and shall be responsible for obtaining all necessary required permits or approvals and making payment to the Contractors for all work performed.

7.2 Duties Generally. Metro Parks or its representative shall provide administration of the Project, scheduling of Stormwater Improvements Project, and coordination of the contractors and any other persons on the site of the Stormwater Improvements Project. Unless otherwise waived in writing by the City, Metro Parks shall maintain a competent staff at the Project and shall establish and implement on-site organization and authority so that the Stormwater Improvement Project may be accomplished timely and efficiently.

7.3 Inspections. Metro Parks shall inspect the Stormwater Improvement Project work of the contractor for defective work. If, through inspection or otherwise, Metro Parks shall become aware of any defective work on the Stormwater Improvement Project, Metro Parks shall report all defective work to the City Contract Administrator, together with recommendations for the correction thereof, and shall notify any applicable Contractor to correct such defective work.

7.4 Progress and Records. Metro Parks shall record the progress of the Stormwater Improvement Project work and shall make available to the City the daily reports related to the progress of the Stormwater Improvements Project and provide written reports to the City on a monthly basis unless otherwise agreed in writing. Such reports shall include, without limitation, information about variations between actual and budgeted or estimated costs and information on the Contractor's Stormwater Improvement Project work showing percentages of completion. Metro Parks shall keep a log for the Stormwater Improvement Project work containing a record of weather, number of workers on site for each Contractor, identification of equipment, work accomplished, problems encountered and other similar relevant data. Metro Parks shall provide for the maintenance at the Stormwater Improvement Project site on a current basis, records of all contracts, drawings, specifications, shop drawings, product data, samples, purchase orders, materials, equipment, maintenance and operating manuals and instructions, and other demolition and abatement-related documents, including all revisions.

7.5 Progress Meetings. Metro Parks shall schedule, conduct and participate in progress, quality control and special meetings with the City Contract Administrator as needed or otherwise requested by the City, to discuss such matters as procedures, progress, problems and scheduling.

7.6 Change Orders. Metro Parks shall recommend necessary or desirable changes in Stormwater Improvement Project to the City Contract Administrator, review Contractor proposals and submit recommendations thereon to the City Contract Administrator, and assist in negotiating change orders in accordance with the standard conditions in the Contract, for authorization by the City. Metro Parks shall keep a log of all requests for information, field work orders, bulletins, contractor proposals, and change orders which shall be available for review by the City Contract Administrator, or designee.

7.7 Stormwater Improvement Project Costs. Metro Parks shall maintain cost accounting records on Stormwater Improvement Project work performed by the Contractor under unit costs, actual costs for labor and materials, or other appropriate basis and afford the City Contract Administrator access to these records at all times, and shall keep and maintain these records for a period of three years after final acceptance. Metro Parks shall maintain in effect a system

of internal control over, and accountability for, Stormwater Improvement Project work performed by its Contractor and establish and maintain all financial records and fiscal control systems. This section shall survive termination of this Agreement.

7.8 Acceptance of Stormwater Improvements Project. When the Contractor considers the Stormwater Improvements Project physically complete, with no remaining punch-list items, and ready for final inspection, Metro Parks shall provide written notice to the City Contract Administrator that the Stormwater Improvements Project is ready for final inspection, and notify the Contractor of acceptance or rejection of the request for final inspection of the Stormwater Improvements Project.

Metro Parks, by written notice, shall request the City Contract Administrator to schedule a final inspection. Metro Parks, the City Contract Administrator, and his or her agents, and the Contractor, will then make a final inspection. Metro Parks shall notify the Contractor in writing of all particulars in which the final inspection reveals the Stormwater Improvements Project to be incomplete or unacceptable. Metro Parks shall require that the Contractor immediately take such corrective measures as are necessary to remedy the listed deficiencies. Corrective measures shall be pursued vigorously, diligently, and without interruption until physical completion of the listed deficiencies is complete and in conformance with the Permitted Plans.

Upon correction of all deficiencies, Metro Parks will notify the City Contract Administrator in writing and shall schedule another final inspection of the Stormwater Improvements Project. If upon inspection the City Contract Administrator and Metro Parks determines that no further deficiencies remain, the City will provide written notice of the same to Metro Parks accepting ownership of the Stormwater Improvements Project. Metro Parks agrees that all right, title and interest in and to the Stormwater Improvements constructed and installed as part of the Stormwater Improvements Project will upon the City's written acceptance of the same, be transferred to the City free and clear of all liens and encumbrances at the time that the City accepts ownership, and that Metro Parks will provide any documents requested by the City that are necessary to convey such ownership to the City.

Upon contract completion and city acceptance, Metro Parks shall receive, review for conformity with the requirements of the Contract Documents and this Agreement, and transmit to the City Contract Administrator any affidavits and turn over to the City Contract Administrator the originals of any guarantees, warranties, releases, bonds, and waivers related to the Stormwater Improvements constructed as part of the Stormwater Improvements Project.

7.9 Modification of Plans. Any material modification to the Permitted Stormwater Improvements Project shall be submitted in writing to the City Contract Administrator for prior written approval, and if not so approved, the previously Permitted Plans shall continue to control. The City shall have the right to disapprove any modifications which (a) do not meet the requirements of this Agreement; (b) do not comply with all applicable legal requirements; (c) would violate the terms of any permits, licenses, permissions, consents or approvals required to be obtained from governmental agencies or third parties; (d) cause the Schedule of the Stormwater Improvements Project to be adversely impacted; (e) involve proposed changes in work or materials that would result in a material diminution in quality of the Stormwater Improvements Project, or (e) do not meet the design requirements for the Stormwater Improvements Project as determined by the City. Approvals by the City under this Section shall not be unreasonably withheld and shall be deemed given with respect to the submitted material (the "submission") unless the City shall notify Metro Parks within ten (10) business days of receipt of the request, stating the reasons for withholding approval.

7.10 Governmental Approvals. The City has issued the permits related to the Stormwater Improvement Project. Except with regard to permits issued by the City, Metro Parks shall apply to any other applicable governmental authorities or third parties for, and shall diligently pursue and obtain, any permit, license, permission, consent or approval as required by law in connection with the Stormwater Improvements Project. The City agrees to reasonably cooperate with Metro Parks in its efforts to secure such permits. Notwithstanding the foregoing, Metro Parks acknowledges that the City has not made any representation or warranty with respect to Metro Parks' ability to obtain any permit or approval, or to meet any other requirements for development of the Property or Project. Nothing in this Agreement is intended or shall be construed to require that the City exercise its discretionary authority under its regulatory ordinances to further the Project nor binds the City to do so. The City will process applications for permits and approvals as if such applications were made without any City participation in such Project.

7.11 Contracting Compliance. Metro Parks shall cooperate with the City to provide documentation of the Stormwater Improvements Project compliance with applicable public works contracting, prevailing wage, retainage and bonding requirements.

7.12 Schedule. Metro Parks and the City have approved a construction schedule (the "**Schedule**") for the Stormwater Improvements Project. The Schedule includes a critical path for the work, including, without limitation, phasing, times for commencement and completion required of its Contractor, and ordering and delivery of materials requiring long lead-time. The Parties understand that commencement of the Stormwater Improvements Project and completion thereof shall be in accordance with the Schedule, excluding time

periods when completion of the Stormwater Improvements Project is unavoidably delayed by reasons of force majeure, enforced delay or delayed or extended by reason of a written request by Metro Parks.

7.13 Standards of Performance. Metro Parks shall cause the contractor to construct the Stormwater Improvements Project in a good and workmanlike manner consistent with the Permitted Plans. All work shall comply with all applicable laws and ordinances.

7.14 Access. The City Contract Administrator and his/her agents shall at all times have access to the Stormwater Improvements Project whenever any Stormwater Improvements Project work is in preparation or in progress. The City inspector shall have access to the Stormwater Improvements Project at all times.

7.15 Tests and Inspections. Metro Parks shall advise and consult with the City Contract Administrator during the Stormwater Improvements Project as to the need for any special testing, inspections or approval of the Stormwater Improvements Project.

7.16 Transfer of Improvements. Metro Parks agrees that after the City issues its notice of acceptance of the Stormwater Improvements Project, the same shall be transferred to the City free and clear of all liens and encumbrances, and that Metro Parks will provide any documents reasonably requested by the City that are necessary to convey such ownership to the City. Metro Parks will also assign to the City any guarantees or warranties associated with the Stormwater Improvements Project.

7.17 As-Built Drawings. Metro Parks shall require its Contractor to provide as-built drawings of the Stormwater Improvement Project to the City within thirty days following contract closeout. The Final Progress Payment will be held until the as-built drawings are reviewed and accepted by the City, which acceptance shall not be unreasonably withheld or delayed.

## 8. Funding and Payment.

8.1. Cost Allocation; Cost Estimate. Table "A" identifies the Project bid items ("Bid Items") for which all or a portion of the actual costs thereof will be allocated to the City as Stormwater Improvement Project work and, further provides the Project costs for each such Bid Item. "Actual Costs" shall mean and refer to those amounts that are paid by Metro Parks to the Contractor for work performed in furtherance of the Stormwater Improvement Project together with applicable sales tax. The City hereby agrees to provide up to Four Hundred and Fifty Thousand Dollars and No Cents (\$450,000.00) (hereinafter referred to as the "**Available Funds**") to Metro Parks, to be used exclusively for payment of the Stormwater Improvements Project, as follows:

Table A

Bid Item	Description	Quantity	Unit	Unit Price	Total
1120	Abandon in place 54" pipe (Plug)	625	LF	\$80	\$50,000.00
4090	RCP Storm Pipe - 54in Diameter	731	LF	\$365	\$266,815.00
4100	Temporary bypass pumping	0.5	LS	\$15,000	\$7,500.00
4165	Manhole 96 in Diameter TY	4	EA	\$18,000	\$54,000.00
25000	Subcontractor Mob / Indirects	0.01	LS		\$11,356.67
	Total Cost of Work				\$389,671.67
7000	GC/CM Fee (5% x Line Item 1)				\$19,483.58
OVERALL TOTAL AMOUNT WITHOUT WSST (Tax rule 171)					\$409,155.25

8.2. The City agrees to make progress payments from the Available Funds to Metro Parks as construction progresses. Progress payments will be based upon an invoice from Metro Parks stating the percentage of the Stormwater Improvements Project work completed. Progress payments shall be made within thirty (30) days of Metro Parks' submission of its invoice and no more frequently than on a monthly basis. The City shall make final payment of the balance of any remaining Available Funds not previously paid by progress payment within the later of thirty (30) days following: (a) Metro Parks' submittal of its final invoice; or (b) the City's final acceptance of the Stormwater Improvements Project as provided in Section 7.8 and delivery and acceptance of the as-built drawings by the City as provided in Section 7.17.

8.3. It is agreed that payment by the City of any progress payment will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment.

9. Overriding Legal Requirements. Notwithstanding anything to the contrary in this Agreement, nothing shall be deemed to preclude or excuse the City or Metro Parks from complying with all applicable laws and ordinances.

10. Indemnification.

10.1. The City agrees to indemnify and hold harmless Metro Parks, its officials, officers, agents, employees, volunteers, and representatives, from, and shall defend at its sole expense, against any and all claims, demands, damages,



suits at law or at equity, liabilities, losses, judgments, liens, expenses, and costs arising out of or occasioned by the City's negligence or wrongful conduct in fulfillment of its obligations pursuant to this Agreement. In the event of recovery due to the aforementioned circumstances, the City shall pay any judgment or lien arising therefrom, including any and all costs as part thereof.

10.2. Metro Parks agrees to indemnify and hold harmless the City, its officials, officers, agents, employees, volunteers, and representatives, from, and shall defend at its sole expense, against any and all claims, demands, damages, suits at law or at equity, liabilities, losses, judgments, liens, expenses, and costs arising out of or occasioned by Metro Parks' negligence or wrongful conduct in fulfillment of its obligations pursuant to this Agreement. In the event of recovery due to the aforementioned circumstances, Metro Parks shall pay any judgment or lien arising therefrom, including any and all costs as part thereof.

10.3. The foregoing obligations shall survive termination of this Agreement.

11. Dispute Resolution. In the event of a dispute between Metro Parks and the City arising out of or relating to this Agreement, Metro Parks' Executive Director and the City Manager, or their designated representatives, shall review such dispute and options for resolution. If the dispute cannot be resolved by Metro Parks' Executive Director and the City Manager, the dispute may be submitted to mediation, if mutually agreed to by the Parties. Otherwise the dispute shall be resolved by binding arbitration.

12. No Waiver. No failure by either party to insist upon the performance of any of the terms of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any of the terms of this Agreement. None of the terms of this Agreement to be kept, observed, or performed by either party, and no breach thereof, shall be waived, altered, or modified except by a written instrument executed by the injured party. No waiver of any breach shall affect or alter this Agreement, but each of the terms of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver of any default of the defaulting party hereunder shall be implied from any omission by the injured party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured party shall not be construed as a waiver of a subsequent breach of the same covenant, term, or conditions.

13. Enforcement, Interpretation, Venue. The laws of the State of Washington shall govern the validity, performance, interpretation, and enforcement of this Agreement. Should either party institute arbitration for enforcement or

interpretation of any provision contained herein, the venue of such arbitration shall be in Pierce County, Washington.

14. Equal Participation in Drafting. The Parties agree that each of them were adequately represented by independent counsel, and that both Parties shared equally in the drafting of this Agreement. Therefore, this Agreement shall not be construed either for or against the City or Metro Parks as drafter, but this Agreement shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result.

15. Integration and Amendment. There are no oral Agreements between the Parties affecting the meaning, content, purpose, or effect of this Agreement. The provisions of this Agreement may be amended in writing with the mutual consent of the parties. All amendments and/or addendums shall be incorporated into the original Agreement, and shall not supersede nor replace the original Agreement unless otherwise indicated. No additions to, or alterations of the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the City Manager and Metro Parks' Executive Director.

16. Invalid Provisions. If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby, if such remainder would then continue to serve the purposes and objectives of the parties.

17. Filing. By its signature below, each party confirms it approves of and is authorized to enter into this Agreement pursuant to RCW 39.34.080. A copy of this Interlocal Agreement shall be filed with the Pierce County Auditor pursuant to chapter 39.34 RCW. Alternatively, a copy of this Interlocal Agreement may be listed by subject on the City and Metro Parks' website or other electronically retrievable public source.

18. Notices. All notices which may be or are requested to be given pursuant to this Agreement shall be deemed given when personally delivered, or when deposited in the United States Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the Parties at the following addresses unless otherwise provided for herein:

To the City:                    Environmental Services Department  
   Attn: Craig May  
   326 East D Street  
   Tacoma, WA. 98421

To Metro Parks:            Marty Stump, Design and Construction Manager  
   Metro Parks Tacoma  
   4702 S. 19<sup>th</sup> Street  
   Tacoma, WA 98405

Either party may change the address to which notices shall be sent by notice to the other party.

19. Confirmation of Authority. By its signature below, each party confirms it approves of and is authorized to enter into this Agreement pursuant to RCW 39.34.080.

This Agreement shall be effective as of the date set forth above, and if no date is set forth above, the last date entered below by the signatories.

**CITY OF TACOMA**

**METROPOLITAN PARK DISTRICT  
OF TACOMA**

\_\_\_\_\_  
Elizabeth A. Pauli  
City Manager

\_\_\_\_\_  
Shon Sylvia  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved:

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Michael Slevin III, P.E.  
Director Environmental Services

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Andrew Cherullo, Finance Director

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Saada Gegoux  
Risk Manager

Approved as to Form:

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Chief Deputy City Attorney

Attest:

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Doris Sorum City Clerk