

**INTERLOCAL AGREEMENT
BY AND BETWEEN
THE METROPOLITAN PARK DISTRICT OF TACOMA
AND
THE CITY OF TACOMA**

FOR RE-DESIGN & CONSTRUCTION OF GAS STATION PARK

THIS INTERLOCAL AGREEMENT (the “Agreement”) is entered into by and between the Metropolitan Park District of Tacoma, a municipal corporation ("Metro Parks"), and the City of Tacoma, a municipal corporation and first-class city of the State of Washington (“the City”) for the purposes described herein (collectively the “Parties”). The re-design and construction of Gas Station Park is hereafter referred to in this document as “the Project”.

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;

WHEREAS, the City is a municipal corporation and first class city of the State of Washington 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;

WHEREAS, the Parties entered into an Interlocal Agreement in 2016 and authorized additional agreements to be created to effectuate the intent of the 2016 Interlocal Agreement;

WHEREAS, Metro Parks intends to re-design and construct the Project in partnership with the City;

WHEREAS, City Council approved a financial contribution to the Project as it will benefit the community members served by the Parties and is in the best interest of the community;

WHEREAS, Metro Parks and the City 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. Metro Parks and the City 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 funding, public outreach, re-design, and development of the Project. Metro Parks has agreed to perform the re-design, permitting, contract administration, construction management and construction work necessary for completion of the Project and the City will provide funding towards the cost of the remaining design, outreach, miscellaneous costs and a portion of construction costs according to the terms and conditions herein.

4. Term and Termination. This Agreement shall be effective on October 25, 2021 (the “**Effective Date**”) upon mutual execution by the Parties and shall remain in effect until completion of the Project and the City’s payment of the Funds, 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.

5. Project Construction.

A. Design. Metro Parks shall be responsible for the selection and hiring of the design professionals to re-design Gas Station Park. Metro Parks has selected Mackay & Sposito, Inc. to perform the design work, which is acceptable to the City.

B. Construction. Metro Parks shall be responsible for compliance with applicable public works contracting, prevailing wage, retainage and bonding requirements and will provide proof of compliance to the City upon request. Metro Parks shall cause its contractor to construct the Project in a good and workmanlike manner consistent with the approved plans. Metro Parks is solely responsible for compliance with all applicable laws and regulations governing the construction, for which the City is in no way responsible.

C. Timetable. The parties anticipate the following schedule with regard to the Project:

Completion of Design & Bid Documents	May 2022
Commencement of Construction	August 2022
Completion of Construction	March 2023

D. Acknowledgement of Funding. Metro Parks agrees to acknowledge the City’s financial contribution to the Project by including the City on a project sign posted for the duration of the construction work at the Project site.

E. Summary Report. Upon project completion Metro Parks shall provide the City a project summary report which will include the following elements: funding sources, funding amounts, and expenditures, including vendor name, service provided, and actual cost.

6. Funding and Payment.

A. Metro Parks currently estimates the cost of completing the Project at *Eight Hundred Seventy One Thousand Nine Hundred and Twenty Four Dollars and No Cents (\$871,924.00)*. The City hereby agrees to provide Three Hundred Twenty Thousand Dollars and No Cents (\$320,000.00) (the "Funds") to be used exclusively for purposes of re-design, outreach, miscellaneous costs and a portion of construction of the Project and no other purpose. The Funds shall not be use for maintenance and/or operations or to pay for Metro Parks staff costs and associated expenses.

B. The City agrees to make progress payments from the Funds to Metro Parks based upon the work completed and as approved and agreed to by both the City and Metro Parks. Progress payments will be based upon an invoice from Metro Parks stating the work completed.

C. Metro Parks shall submit invoices for payment that include all the City's required supporting documentation such as copies of construction invoices paid. Metro Park's invoice shall be a numbered invoice showing the project name and a description of work items being invoiced. Any incomplete or improperly prepared invoice will be returned for correction without processing or payment. Payment from the City will be due thirty (30) days after submission of its invoice and no more frequently than on a monthly basis.

D. Metro Parks' invoices and supporting documentation shall be mailed to the City at the address below with "Attention: Jennifer Hines" or e-mailed to jhines@cityoftacoma.org.

E. The City shall make final payment for remaining, unpaid costs for re-design, outreach, miscellaneous costs and a portion of construction of the Project from the balance of any remaining Funds not previously paid by progress payment upon receipt of the summary report specified above.

F. It is agreed that payment by the City of any progress payment will not constitute agreement as to the appropriateness of any item.

7. Ownership. Metro Parks is the owner of the Project site and will be the owner of the improvements from the Project. Metro Parks will be responsible for the operation and maintenance of the Project site when completed.

8. Indemnification.

A. 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 Park's 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.

B. 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.

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

9. 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.

10. 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's 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's Manager, the dispute may be submitted to mediation, and if still not resolved, shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04 RCW, and the judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

11. 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. The prevailing party in any arbitration or litigation arising out of this Agreement shall be entitled to its reasonable attorney's fees, costs and expert witness fees.

12. 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.

13. 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 with the mutual consent of the parties. 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 duly authorized agents of both parties

14. 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

15. 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.

16. 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: Real Property Services
 c/o Assistant Division Manager
 City of Tacoma
 747 Market Street, rm 737
 Tacoma, WA 98402
 jhines@cityoftacoma.org
 253-591-5320

To Metro Parks: Kristi Evans, Program Manager
Metro Parks Tacoma
4702 S. 19th Street
Tacoma, WA 98405
Kristi.evans@tacomaparks.com
253-305-1054

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

17. 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

Dated: _____

Dated: _____

ATTEST:

Doris Sorum, City Clerk

Josh Diekmann, P.E. PTOE
Interim Public Works Director/City Engineer

Approved as to Form:

Deputy City Attorney