

**AGREEMENT OF FINANCIAL COMMITMENT
BETWEEN
THE METROPOLITAN PARK DISTRICT OF TACOMA
AND
THE CITY OF TACOMA
FOR POINT DEFIANCE TRAIL PHASE I IN CONJUNCTION WITH
THE REGIONAL STORMWATER TREATMENT FACILITY**

THIS AGREEMENT (the "Agreement") entered into this ____ day of _____, 2015 by and between the **Metropolitan Park District of Tacoma**, a municipal corporation ("Metro Parks"), and the **City of Tacoma**, a municipal corporation (the "City") for the purpose of financing the excavation of soil for the Point Defiance Trail Phase I in conjunction with the Regional Stormwater Treatment Facility as depicted as "Schedule B" on the attached Exhibit A (hereinafter referred to as the "Project") for the benefit of the citizens served by all parties to the agreement, upon the following terms and conditions:

WHEREAS, the City has planned certain stormwater improvements within the triangle area of Point Defiance Park to improve the quality of stormwater discharged from to City's North Tacoma watershed (the "**Stormwater Project**"); and

WHEREAS, Metro Parks has planned certain boat trailer parking improvements within the triangle area of Point Defiance Park as part of the Waterfront Phase I Improvements that will require the removal and stockpiling of soils (the "**Park Improvements**"); and

WHEREAS, Metro Parks and the City have determined that there would be mutual benefit by combining the work related to the Stormwater Project with soils removal work for the Park Improvements through a single public work project managed and administered by the City (the "**Joint Soil Excavation/Regional Stormwater Facility Project**" or "**Project**"); and

WHEREAS, the Metro Parks Board of Commissioners approved Resolution No. R29-15 authorizing execution of an Interlocal agreement with the City setting forth the terms and conditions upon which the City will manage and administer this Project, including providing public notifications, design and engineering, permitting, bidding, and construction, and providing for equitable allocation of costs to Metro Parks and reimbursement by Metro Parks to the City for such equitable allocation; 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. Intergovernmental Cooperation Act. This Agreement is entered into pursuant to the Intergovernmental Cooperation Act, chapter 39.34 RCW.
2. Purpose. The advancement of Point Defiance Trail Phase I for the citizens of the City of Tacoma and the construction of stormwater improvements to improve the quality of stormwater discharged from to City's North Tacoma watershed.
3. Scope. The parties have agreed to cooperate in the construction of the Project which may include any or all of the following: demolition, excavation, construction, landscaping, and signage. The City has agreed to act as the project manager which includes the permitting, contract administration, construction management and construction necessary for completion of the Project.
4. Funding. Metro Parks hereby agrees to provide up to Three Million Dollars and No Cents (\$3,000,000.00) (hereinafter referred to as the "**Available Funds**") to the City, to be used exclusively for payment of Project costs allocated to Metro Parks as set forth in Schedule "A". Metro Parks agrees to make progress payments from the Available Funds to the City as construction progresses. Progress payments will be based upon the percentage of work completed for which Metro Parks has been allocated a share of the costs as set forth in Schedule "A". Such progress payments shall be made no more frequently than on a monthly basis, within thirty (30) days of the City's submittal of invoices, together with its warrant of monies paid and copies of the invoices that it has paid. Metro Parks shall make final payment of the balance of any remaining Funds not previously paid by progress payment within thirty (30) days of the City's submittal of its final invoice and warrant of monies paid.
5. Plans and Specifications. Metro Parks agrees to provide updated design and specifications, and permitting documents to include the revisions required for the future park improvements. The final plans and specifications for the Project are on file with the City under Solicitation No. ES15-0216F (the "**Plans and Specifications**") which Plans and Specifications have been reviewed and are hereby approved by Metro Parks and incorporated into this Agreement as though fully set forth herein.
6. Construction. The City shall comply with its legal requirements regarding notice for bids or proposals for goods or services used to construct the Project. The City is independently responsible for compliance with all applicable laws and regulations governing the construction, for which Metro Parks is in no way responsible. The City shall comply with its legal requirements regarding notice for bids or proposals for goods or services used to construct the Project. The City will provide proof of its compliance with applicable public bidding and procurement laws, rules and regulations upon Metro Parks' request. In the event that the cost of the Project exceeds the current estimate, the parties agree to meet to discuss all viable avenues for completion of the Project.
7. Construction Management. The City will administer and manage the construction contract. As part of the cost allocation, the City will charge Metro Parks for the incremental construction management time associated with the Metro Parks

Bid Items as set forth in Schedule “A”. The estimated cost of construction management is \$55,000.00 which costs are allocated to Metro Parks.

8. Change Orders. Metro Parks will be included in the initiation, discussion, review and approval of any addendums, revisions, change orders, or change of scope pertaining to the Metro Parks Project work or cost allocation to Metro Parks. Metro Parks shall review material in a timely manner as to not delay payment.

9. Unforeseen Conditions. In the event unforeseen conditions require an increase in the Funds, this Agreement will be modified by a written amendment covering said increase.

10. Cost Allocation; Cost Estimate. Schedule “A” identifies the Project bid items (“**Bid Items**”) for which all or a portion of the actual costs thereof will be allocated to Metro Parks and, further provides an estimate of the Project costs for each such Bid Item. “Actual Costs” shall mean and refer to those amounts that are paid by the City to the City’s Contractor for work performed in furtherance of the Project together with applicable sales tax. The Bid Items are more particularly described in the bid documents on file with the City under Solicitation No. ES15-0216F.

In addition to the construction management costs, Metro Parks agrees to reimburse the City from the Available Funds those actual Project costs allocated to Metro Parks as follows: one hundred percent (100%) of the actual costs for Bid Items B202, B203, B204, B205, B208, B209, B210, B222 and B224; one hundred percent (100%) of the actual sales tax paid for all Bid Items in Schedule “A”; forty-six percent (46%) of the actual costs for Bid Items A115, A116, A117, A158, and A159; and, eighty-three percent (83%) of the actual costs for Bid Items B200, B201 and B221.

Schedule A

Bid Item	Description	Quantity	Unit Cost	Total
<u>A115</u>	<u>Site Health and Safety Plan</u>	<u>1</u>	<u>LS</u>	\$552.00*
<u>A116</u>	<u>Site Health and Safety Officer</u>	<u>1</u>	<u>LS</u>	\$3,680.00*
<u>A117</u>	<u>Soil Management Plan</u>	<u>1</u>	<u>LS</u>	\$552.00*
<u>A158</u>	<u>Stormwater Pollution Prevention Plan (SWPPP)</u>	1	<u>LS</u>	\$552.00*
<u>A159</u>	<u>NPDES Construction Stormwater General Permit</u>	1	<u>LS</u>	\$552.00*
<u>B200</u>	<u>Mobilization</u>	<u>1</u>	<u>LS</u>	\$157,700.00**

<u>B201</u>	<u>Project Temporary Traffic Control</u>	<u>1</u>	<u>LS</u>	\$87,482.00**
<u>B202</u>	<u>Removal of Structure and Obstruction</u>	<u>1</u>	<u>LS</u>	<u>\$17,500.00</u>
<u>B203</u>	<u>Building Removal</u>	<u>1</u>	<u>LS</u>	<u>\$3,200.00</u>
<u>B204</u>	<u>Roadway Excavation Incl. Haul</u>	<u>88,200</u>	<u>CY</u>	<u>\$1,749,000</u>
<u>B205</u>	<u>Roadway Excavation of Contaminated Material, Incl. Stockpile</u>	<u>16,800</u>	<u>CY</u>	<u>\$162,000.00</u>
<u>B208</u>	<u>Remove Existing Pavement, Type I Class A4</u>	<u>3,400</u>	<u>SY</u>	<u>\$20,400.00</u>
<u>B209</u>	<u>Crushed Surfacing Top Course</u>	<u>39</u>	<u>TON</u>	<u>\$12,540.00</u>
<u>B210</u>	<u>HMA Cl. 1/2 In. PG 64-22</u>	<u>17</u>	<u>TON</u>	<u>\$2,550.00</u>
				\$ 78,850.00 **
<u>B221</u>	<u>Erosion/Water Pollution Control</u>	<u>1</u>	<u>LS</u>	
<u>B222</u>	<u>Resolution of Utility Conflicts and Environmental Discovery</u>	<u>1</u>	<u>FA</u>	\$40,000
B224	WSDOT Ferry Camera System	<u>1</u>	<u>EA</u>	\$10,000.00
	9.5% Sales Tax			232,000.45
Total Estimate				\$2,674,110.45

* 46% of the cost for this bid item, which is the MPT portion of the whole project.

**83% of the cost for this bid item, which is the MPT portion of Schedule B.

11. No Separate Legal Entity. It is not the intention of the parties, nor shall this Agreement be interpreted, to create a separate legal entity for the performance of this Agreement. The City shall remain responsible for administering the construction of the Project. Metro Parks shall have no obligation to any party providing labor, services, equipment or materials used in the construction of the Project except as expressly provided in this Agreement.

12. Indemnification. 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.

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.

13. Dispute Resolution. In the event of a dispute between Metro Parks and the City arising out of or relating to this Agreement, the 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, 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.

14. 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 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 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 the MPT 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 Park's web site or other electronically retrievable public source.

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.

Accepted for the City of Tacoma:

Accepted for the Metropolitan Park

District of Tacoma:

T.C. Broadnax
City Manager

Jack C. Wilson
Executive Director

Approved:

Michael Slevin, P.E.
Director Environmental Services

Andrew Cherullo Finance Director

Attest:

Doris Sorum
City Clerk

DRAFT

Approved as to form:

Deputy City Attorney

Saada Gegoux
Risk Manager

STATE OF WASHINGTON)

: ss

County of _____)

On this _____ day of _____, 2015, before me the

undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **T.C. BROADNAX** to me known to be the **CITY MANAGER** of the **City of Tacoma**, the Municipal Corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes mentioned therein and on oath stated that he/she was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

Notary Public in and for the State of
Washington, residing at _____

My commission expires _____

DRAFT

STATE OF WASHINGTON)

ss County of Pierce)

On this _____ day of _____, 2015, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **JACK C. WILSON** to me known to be the **EXECUTIVE DIRECTOR** of the **Metropolitan Park District of Tacoma**, ("MPD"), that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the MPD, for the uses and purposes mentioned therein and on oath stated that he/she was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

GIVEN under my hand and official seal the day and year last above written. (SEAL)

Notary Public in and for the State
of Washington, residing at

My commission expires