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**Name & Return Address:**

City of Tacoma - City Clerk's Office

733 Market Street, Room 11

Tacoma, WA 98402-3769

**Washington State Recorder's Cover Sheet** (RCW 65.04) Please print legibly or type information.

|   |   |
|---|---|
| <b>Document Title(s)</b>  | Interlocal Agreement  |
| <b>Grantor(s)</b>   | City of Tacoma<br><br>____ Additional Names on Page ____ of Document                            |
| <b>Grantee(s)</b>   | Metropolitan Park District of Tacoma<br><br>____ Additional Names on Page ____ of Document      |
| <b>Legal Description</b><br>(Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section)  | For the 56th Street Sidewalk Project<br><br>Complete Legal Description on Page ____ of Document |
| <b>Auditor's Reference Number(s)</b>  |   |
| <b>Assessor's Property Tax Parcel/Account Number(s)</b>   |   |
| <b>Non Standard Fee \$50.00</b><br><b>By signing below, you agree to pay the \$50.00 non standard fee.</b><br>I am requesting an emergency non standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.<br><br>_____<br><b>Signature of Party Requesting Non Standard Recording</b><br>NOTE: Do not sign above or pay additional \$50.00 fee if document meets margin/formatting requirements.<br><br>The Auditor/Recorder will rely on the information provided on this cover sheet.<br>Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein. |   |

**AGREEMENT BETWEEN  
THE METROPOLITAN PARK DISTRICT OF TACOMA  
AND  
THE CITY OF TACOMA  
FOR THE 56<sup>TH</sup> STREET SIDEWALK PROJECT WITH THE CITY OF TACOMA  
STREETS INITIATIVE PACKAGE #33**

**THIS AGREEMENT** (the “Agreement”) entered into this 24<sup>th</sup> day of August, 2020 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 design and construction of Plans and Specifications of the 56<sup>th</sup> Street sidewalk from the Pipeline Trail to the entry of Swan Creek, (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 street improvements within the 56<sup>th</sup> street area; and

**WHEREAS**, Metro Parks has planned sidewalk and curb improvements to provide safer access to an entry into Swan Creek Park from First Creek Middle School and the Eastside Community Center; and

**WHEREAS**, Metro Parks and the City have determined that there would be mutual benefit by combining the Metro Parks 56<sup>th</sup> Street sidewalk improvements with the City’s Streets Initiative Package #33 through a single public work project managed and administered by the City; and

**WHEREAS**, Metro Parks has agreed to make a financial contribution for their portion of the Project as it will benefit the citizens served by the Parties and is in the best interest of the community; and

**WHEREAS**, the Metro Parks Board of Commissioners approved Resolution No. R38-20 authorizing execution of an 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**, Metro Parks and the City desire to enter into this 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. Compliance. This Agreement's purpose is stated in Section 3 and 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/Scope. The City's Streets Initiative Package #33 project will include Metro Park's 56th Street sidewalk improvements (see Exhibit A) which may include any or all of the following: demolition, excavation, construction of concrete sidewalk with curb and gutter of 700' long and 10' wide, landscaping, and signage, from the Pipeline Trail to the entry of Swan Creek for the citizens of the City of Tacoma. The City has agreed to 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. Metro Parks has agreed to reimburse the City for such equitable allocation.

4. Term and Termination. This Agreement shall be effective on the 24<sup>th</sup> day of August, 2020 (the "Effective Date") upon mutual execution by the parties and shall remain in effect until completion of the Project and Metro Parks payment as provided below, at which time this Agreement shall expire. In the event that this agreement is executed after the Effective Date, Metro Parks and the City 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 the City's issuance of a Notice To Proceed to its Contractor, by giving notice to the other party twenty days (20) prior to the date of termination. If such notice is given each party shall bear its own costs incurred pursuant to this agreement.

5. Project Design and Construction.

A. Design. The City shall submit the final design and specifications for the Project to Metro Parks for Metro Parks' review and approval. Once the final design and specifications are approved, any subsequent material modifications shall be submitted to Metro Parks and shall be subject to Metro Parks' review and approval. The approved Plan and Specifications shall be incorporated into this Agreement as though fully set fourth here in. Metro Parks encourages the use of environmentally sustainable design and construction practices for the implementation of this project. Metro Parks

further encourages outreach and engagement of project stakeholders and affected members of the public.

- B. Construction. The City shall be responsible for compliance with applicable public works contracting, prevailing wage, retainage and bonding requirements and will provide proof of compliance to Metro Parks upon request. The City shall cause its contractor to construct the Project in a good and workmanlike manner consistent with the approved plans. The City shall provide reasonable written notice to Metro Parks after the Project has been installed to verify that it was installed per plans. The City is solely responsible for compliance with all applicable laws and regulations governing the construction, for which Metro Parks is in no way responsible.
- C. 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.
- D. Timetable. The parties anticipate the following schedule with regard to the Project:

|                              |           |
|------------------------------|-----------|
| Completion of Final Design   | Sept 2020 |
| Commencement of Construction | Dec 2020  |
| Completion of Construction   | Feb 2021  |

- E. Acknowledgement of Funding. The City agrees to acknowledge Metro Parks' financial contribution to the Project by including Metro Parks on a project sign posted for the duration of the construction work at the Project site.
- F. Summary Report. Upon project completion The City will provide final electronic AutoCAD & PDF files including topographic survey of the finished grade, finish grading contours, as-built site features, and utilities as well as a project summary report to Metro Parks 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 hereby agrees to provide up to Eighty Thousand Dollars and No Cents (\$80,000.00) (the "Funds") to be used exclusively for design and

construction of the Project and no other purpose. The Funds are bond proceeds and the City shall not use the funds for maintenance and/or operations or to pay for the City staff costs and associated expenses. The Funds must be used exclusively for public park and recreation capital improvements.

- B. Metro Parks agrees to make progress payments from the Funds to the City based upon the percentages of work completed and as approved and agreed to by both the City and Metro Parks. Progress payments will be based upon an invoice from the City stating the percentage of the Project work completed.
  - C. The City shall submit invoices for payment that include all Metro Parks' required supporting documentation such as copies of construction invoices paid and proof of payment. The City's invoice shall be a numbered invoice showing the project number, title 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 Metro Parks will be due thirty (30) days after submission of its invoice and no more frequently than on a monthly basis.
  - D. Metro Parks shall make final payment of the balance of any remaining Funds not previously paid by progress payment upon receipt of the final invoice and the summary report specified above.
  - E. In the event unforeseen conditions require an increase in the Funds, this Agreement will be modified by a written amendment covering said increase. 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. 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.
8. Indemnification.
- A. 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.

- B. 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.
- 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, or 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 than 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, 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 or their designated representatives, 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, cost 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. 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 dully 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. 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 of Tacoma: Nick Correll/ Engineer  
City of Tacoma  
747 Market St., Room #544  
Tacoma, WA 98402  
ncorrell@cityoftacoma.org  
253-591-5492

To Metro Parks: Kristi Evans, Capital Program Manager  
Metro Parks Tacoma  
4702 S. 19<sup>th</sup> Street  
Tacoma, WA 98405  
[Kristi.evans@tacomaparks.com](mailto: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.

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

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.

Accepted for the City of Tacoma:

Accepted for the Metropolitan Park District of Tacoma:

DocuSigned by:  
*Elizabeth Pauli*

10/26/2020 | 12:53 PM PDT

Elizabeth Pauli  
City Manager

DocuSigned by:  
*Shon Sylvia*

10/26/2020 | 2:13 PM PDT

Shon Sylvia  
Executive Director

Approved:

DocuSigned by:  
*Kurtis Kingsolver*

9/22/2020 | 2:22 PM PDT

Kurtis Kingsolver  
Public Works Director

DocuSigned by:  
*Andy Cherullo*

9/23/2020 | 4:21 PM PDT

Andrew Cherullo  
Finance Director

Attest:

DocuSigned by:  
*Doris Sorum*

10/26/2020 | 1:29 PM PDT

Doris Sorum  
City Clerk



Approved as to form:

DocuSigned by:

*Steve Victor*

9/21/2020 | 9:57 AM PDT

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Steve Victor  
Deputy City Attorney

DocuSigned by:

*Saada Gegoux*

9/18/2020 | 1:04 PM PDT

964847629A944F3...

Saada Gegoux  
Risk Manager

