

Proposed Agenda & Meeting Materials
October 28, 2020 - 5:00 PM
Capital Improvement Committee Meeting (CIC)
Remote Meeting



ATTENTION:

Protecting the public, our partners, and our staff are of the utmost importance.

Due to recent health concerns with the novel coronavirus and in compliance with the Governor's Executive Order 20-28.2 (amending 20-05, 20-28, 20-28.1 , 20-28.2, 20-28.3, 20-28.4, 20-28.7 , 20-28.8, 20-28.9, 20-28.10), this meeting will be held remotely.

You can listen to the Capital Improvement Committee Meeting (CIC) online by following the instructions below: (either by online link or by phone)

Topic: **Metro Parks Tacoma Capital Improvement Committee (CIC) Meeting**

Time: **October 28, 2020 05:00 PM Pacific Time (US and Canada)**

Join Zoom Meeting Online by clicking the link below:

<https://zoom.us/j/95041531173?pwd=ZUsvRmRLOUpNTWdZdGFxM085Zz09>

Or Dial:	(253) 215-8782
Enter Meeting ID:	950 4153 1173
Password:	039699
Participant ID:	No ID needed, just press #

Order of Presentation: In general, each agenda item will include a short staff presentation, followed by board discussion. Public Comment is not taken at this committee meeting.



**BOARD OF PARK COMMISSIONERS
CAPITAL IMPROVEMENT COMMITTEE
AGENDA**

**October 28, 2020
5:00 PM**

MINUTES FROM October 20, 2020 Special Session

PROJECT STATUS REPORT

DISCUSSION ITEMS

ACTION ITEMS

- Swan Creek Bid Acceptance Resolution
- Foss Waterway Property Transfer Agreement
- Titlow Park WSDOT Funding Agreement

FUTURE AGENDA TOPICS

ADJOURNMENT



**BOARD OF PARK COMMISSIONERS
CAPITAL IMPROVEMENT COMMITTEE
(VIRTUAL MEETING)**

**October 20, 2020
5:00 PM
MINUTES**

Attendees: Commissioner Pointer, Commissioner Baines
Staff Support: **Marty Stump**, Planning Deputy Director - Planning & Development Department; **Kristi Evans**, Capital Program Manager – Community & Neighborhood Parks; **Mary Kay Henley**, Planning Administration

Acceptance of Minutes: Minutes from the September 16, 2020 meeting were approved as written.

Agenda Update

- The ATP & Certified Payroll Policy agenda item was pulled from today's agenda. Marty explained that internal discussion continues regarding proposed adjustments to this labor/payroll tracking practice on certain capital projects. This item will be presented at future CIC for consideration.

Project Status Update

- Commissioner Pointer asked status of the new signage at the Dune Peninsula. Marty reported that installation is underway and that various sign types are being installed as they are being fabricated and that installation will continue over the coming weeks until complete. He explained there are multiple types of signs, both direction and interpretive. In addition medallions are being imbedded into the pavement.

Discussion Item

Swan Creek East 56th Street Improvements Project Update

- Marty reported that construction will be getting underway this winter by the City of Tacoma on the 56th Street sidewalk at the entrance to Swan Creek Park. The new sidewalk will improve pedestrian access to Swan Creek Park, noting currently it is currently a dirt path. He added the climbing rock at First Creek Middle School is being built and will be installed in November of this year.
- Commissioner Baines asked if the flashing lights by the Pipeline Trail have improved pedestrian safety. Marty reported the City of Tacoma has an ongoing program in place to reduce pedestrian collisions called Vision Zero. Safety features are being added in locations identified as high-risk for vehicle/pedestrian collision. Mid-block, shared-use trail crossings of roadway such as at 56th street are these sort of situations.
- Commissioner Pointer concluded the new sidewalk is a nice addition to the community.

Dickman Mill Park Construction Contract Award

- This special CIC meeting is being called so the Dickman Mill Park Construction Contract award can be added to the upcoming Monday October 26 Board meeting. This was needed to give the contractor as much time as possible to meet the conditions of an in-water work deadline (Fish Window).
- This resolution authorizes the contract award to Redside Construction for the Dickman Mill Expansion and Heads Saw project in the amount not to exceed \$1,611,124. The funds for this project are from donations by Cambia Health Solutions
- Kristi explained that Redside Construction was the low bidder of the 5 bids received, 4 ultimately deemed responsive. She reported good feedback from reference checks.
 - Commissioner Pointer like that they are a local contractor (Bainbridge Island) and have some MWBE contractors identified in their bidding.
- Work under this contract will consist of demolition and clearing; an upland wood decking plaza on steel piles; grated ramps to the upland plaza; additional guard railings; restoration of the historic mill pulley on placed wood decking; restoration of the historic mill head saw placed on a new base and supported on steel piles; restoration of the historic mill log carriage on existing in-water foundations and steel piles; installation of an artist-designed “Ghost Log” placed on the restored log carriage; a grated overwater walkway and overwater viewpoint with wood decking; custom timber benches and installation of new and existing interpretive signage; site lighting for the head saw, log carriage, and Ghost Log, and relocation of one existing pedestrian light pole; habitat mitigation; landscape planting; landscape restoration of disturbed areas; and modification and repair of the existing irrigation system.
- Kristi reported the contractor needs to be brought on board as soon as possible because this project includes a Fish Window that closes February 15, 2021. She added that Redside Construction is optimistic they can meet this deadline because the needed pilings are in stock.
 - Commissioner Pointer asked about the fish window. Kristi explained the Fish Window started in October and runs through February 15th. All water work needs to be completed during this time. She added the project’s small portion of water work (pile driving) will be done first, with the rest of the work happening in the upland area.
- Kristi reported the Ghost Log artwork is complete and is being stored at the city dump for installation in early spring. An extra \$100,000 was required for this art piece. She added that because of the beneficial bid results this project now has a large contingency fund and any funds not spent will be returned to Cambia Health Solutions.
- Marty reported the headsaw restoration is being completed by Spokane-based Northwest Fabricators. Work will take approximately 4 months and they will have to transport the headsaw to and from Spokane.
- Commissioner Pointer commented he likes this project. In addition he asked about safety measures to insure children can’t climb on the structure.
 - Kristi-reported people won’t be able to touch the pieces, noting a guard rail is being installed 6 feet away from the headsaw and it sits in a recessed area. The Ghost Log piece will also have walls blocking access.
 - Commissioner Pointer suggested adding signage saying that climbing not allowed. Kristi reported our Risk Management Team did not require such measures but that will monitor the public’s use of the area and respond in the future if needed.

- Marty concluded a lot of work has taken place around project safety, making sure the pieces are separated from viewers.
- Commissioner Pointer asked if this project will be completed by next spring. Kristi reported yes.
- Commissioner Baines asked if we have worked with the Puyallup Tribe of Indians on this project. Kristi said yes, noting special collaboration on interpretive signage and the Ghost Log.
- Commissioner Baines asked to see the bid tab results. Marty will circulate this to both commissioners for review.
- This item was accepted for moving forward to the full Board with a recommendation of approval.

Meeting Adjourned



MEMORANDUM

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

FROM: Debbie Terwilleger, Director of Planning & Development

SUBJECT: Contract Award to ##### for Swan Creek Phase II

DATE: 11/4/2020

EXECUTIVE SUMMARY: This resolution authorizes the contract award to ##### for SwanCreek Phase II in the amount not to exceed \$XXXXX, including Washington State Sales Tax.

BACKGROUND:

The bid opening was held on October 27, 2020. ## (#) bids were received and all ## (#) were considered responsive.

Please refer to the attached bid tabulation for the list of contractors and bid amounts. ##### submitted low Base Bid in the amount of \$XXXX.00 (not including WSST). Reference checks by staff have confirmed that ##### is a responsible contractor and performs quality work.

Staff is recommending award of the Base Bid for a total amount of \$XXXX.## (including Washington State Sales Tax).

This project is the construction of park improvements within a the 83.6 acre uplands area of Swan Creek Park. The area that this work is taking place is amongst the WWII era street grid. Work under this contract will consist of demolition and clearing, new and renovated trails and multi-use paths, two picnic shelters, a restroom, four-acre dog-park, interpretive and wayfinding signage, 70 standard parking stalls and 5 ADA parking stalls, road improvements associated with parking access, landscaping, site furnishings, new utilities.

The 'Other Costs' budget line accounts for project expenses such as printing, bidding, advertising, equipment, commissioning, inspections, & permits.

The construction of this phase of work is anticipated to take 300 calendar days to complete after issuance of a Notice to Proceed. Kristi Evans will be project manager for this project.

FISCAL IMPACT: The funds for this project are from Legacy Grant (RCO/NPS,) UTGO 2014 Bond Funds, Open Space Eastside and GMPF donation.

Insert Financial Table Here

ADDITIONAL INFORMATION: For additional information, please contact Debbie Terwilleger, Director of Planning and Development at (253) 305-1086 or debbiet@tacomaparks.com

METROPOLITAN PARK DISTRICT OF TACOMA

RESOLUTION NO. PWXX-XX

**SWAN CREEK PHASE II BID#: J2020-##
CONTRACT AWARD TO ##### SERVICES**

WHEREAS, the Board of Park Commissioners of the Metropolitan Park District of Tacoma desires to make upgrades Swan Creek Park; and;

WHEREAS, funds for the project consist of Legacy Grant (RCO/NPS,) UTGO 2014 Bond Funds, Open Space Eastside and GMPF donation. and

WHEREAS; ## (#) bids (Bid#: J2020-12) were received with ## (#) being considered responsive; and

WHEREAS, the low Base Bid was submitted by #####, in the amount of \$XXXX.00, has been reviewed by contract compliance and is considered a responsive bid; and

WHEREAS, Metro Parks staff has checked the references of ##### and find them to be responsible; Now, therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma to award and execute the contract with #####, in the amount of \$XXXX.XX (including WSST.)

The foregoing resolution was adopted by the Board of Park Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on _____2020.

President

ATTEST:

Secretary

Clerk

**AGREEMENT FOR TRANSFER OF
FOSS WATERWAY PARKS**

THIS AGREEMENT FOR TRANSFER OF FOSS WATERWAY PARKS (the “Agreement”) is dated as of _____, 2020 (for reference purposes only) and is by and between the FOSS WATERWAY DEVELOPMENT AUTHORITY (“FWDA”), a public corporation organized under the laws of the State of Washington, the METROPOLITAN PARK DISTRICT OF TACOMA (“Metro Parks”), a municipal corporation organized under the laws of the State of Washington, and the CITY OF TACOMA (the “City”), a Washington municipal corporation and first-class city. FWDA, Metro Parks and the City are sometimes collectively referred to as the “Parties.”

RECITALS

A. The FWDA was established by the City in 1996 to assist in redeveloping certain real property in and along the Foss Waterway, by acquiring, managing and disposing of real property, securing financing, undertaking or providing for redevelopment and entering into agreements with developers proposing to develop projects along the Waterway.

B. Beginning in 1997, the City and FWDA executed a series of Operating Agreements to guide the FWDA's work, the final extension of which expires December 31, 2020.

C. The FWDA has successfully designated all public access and parks along the waterway including park development, design, and initiated fundraising for parks not yet completed.

D. The FWDA was not intended to be a permanent entity, and after more than twenty years and the substantial completion of the FWDA's mission, the FWDA and the City concur that the time is right to conclude the work of the FWDA and transition the park properties to Metro Parks.

E. FWDA currently owns the Melanie Jan LaPlant Dressel Park, Waterway Park, and the southerly portion of George H. Weyerhaeuser Jr. Park, which are more particularly depicted and described in Exhibit A (the “FWDA Parks”).

F. Metro Parks was created in 1907 for the management, control, improvement, maintenance, design and acquisition of parks, parkways, boulevards, avenues, playgrounds, and aviation landings, and to conduct forms of recreation or business judged desirable or beneficial for the public within the City and certain areas of Pierce County.

G. For over fifteen years, FWDA, Metro Parks, and the City have worked together to plan a system of parks and open space along the Thea Foss Waterway. These efforts assumed that Metro Parks would be the ultimate owner of the park properties along the Foss, as long as the properties had been properly remediated and supported by sustainable long-term maintenance and operations funding.

H. The Parties find it mutually beneficial and in the public's best interest to transfer the FWDA Parks to Metro Parks and then to collaborate on the development of the FWDA Parks and funding the operations and maintenance of the Parks.

I. Chapter 39.33 RCW (Intergovernmental Disposition of Property) permits local government units to transfer or exchange title to real property on such terms and conditions as may be mutually agreed upon by the proper authorities of said local government units.

In consideration of the mutual promises and undertakings hereinafter set forth and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Recitals. The recitals are incorporated herein by reference.
2. Conditions to Transfer of the Parks. FWDA, or its successors or assigns, and the City shall transfer ownership of the FWDA Parks to Metro Parks when all of the following conditions are satisfied:
 - A. The City has executed a Hazardous Substances Indemnification Agreement in which the City indemnifies Metro Parks and its successors from any claims or liability relating to any hazardous substances at the FWDA Parks, substantially in the form attached as Exhibit B;
 - B. Metro Parks has conducted its due diligence and reviewed and approved a preliminary commitment for title insurance for the FWDA Parks; and
 - C. The Parties have identified adequate and sustainable funding sources for the ongoing operations and maintenance of the Parks in mutually agreeable amounts.
3. Transfer Instruments. FWDA shall convey the FWDA Parks to Metro Parks by quitclaim deed, will assign the Berg Scaffolding Lease associated with Waterway Park, and will transfer all of the improvements related to the FWDA Dock by bill of sale.

4. Obligations at Closing.
 - A. Closing Costs. The Parties will split all closing costs associated with the conveyance of the Parks.
 - B. Consent Decree. At or prior to closing and at no cost to Metro Parks, Metro Parks will become party to that certain Consent Decree, among the FWDA, the City and the Washington State Department of Ecology, dated October 19, 1994, which was comprehensively amended April 30, 2002, and re-titled Consent Decree – First Comprehensive Amendment and entered in Pierce County Superior County under Cause No. 94-2-10917-6, as it may be further amended (the “Consent Decree”).
 - C. Closing Date. Closing shall occur on or before December 31, 2020.
5. Representations and Warranties Regarding the Parks Upon Transfer. The FWDA and the City jointly and severally represent and warrant to Metro Parks at the time of conveyance to Metro Parks and with regard to the FWDA Parks as follows:
 - A. The FWDA and the City will have provided to Metro Parks all environmental documents and records related to the Parks, including leases, contracts, environmental reviews, notices from any governmental bodies affecting the FWDA Parks, the operation and/or the management of the FWDA Parks.
 - B. The FWDA and the City are in full compliance with the Consent Decree – First Comprehensive Amendment (and any subsequent amendments, additions or changes) (collectively the “Consent Decree”).
 - C. The remedial action of the FWDA Parks has been completed in accordance with all applicable requirements and no further action is necessary.
 - D. No containment system, treatment system or monitoring system is installed in the Parks that require any present or future operation or maintenance obligations.
6. Possession, Operation and Maintenance of the FWDA Parks.
 - A. Metro Parks shall have possession of the FWDA Parks upon Closing at which time Metro Parks will be responsible for the operations and maintenance of the FWDA Parks, subject to the provisions of this Agreement.
 - B. Upon the termination of the Berg Lease at Waterway Park, the City agrees to remove any remaining improvements on Waterway Park that Metro Parks is not incorporating into its park design and perform at its sole expense such remedial

and cleanup work as required by law to make Waterway Park suitable for development as a public park.

7. Funding for the Parks.

A. Initial Source of Operations and Maintenance Funding. FWDA has transferred \$500,000 to the Greater Tacoma Community Foundation (the "Foundation") for future use for the Parks. As provided in the Gift Agreement attached as Exhibit C, earnings shall be used for operations and maintenance costs and funds may be drawn by the entity providing operations and maintenance of the FWDA Parks.

B. Melanie's Park. The City will transfer Seven Hundred and Fifty Thousand Dollars (\$750,000.00) to Metro Parks at Closing which funds were appropriated for the cost of improvements to Melanie's Park. Metro Parks shall only use these funds to pay for the improvements to Melanie's Park.

C. Future Sources of Funding. The parties acknowledge and agree that Metro Parks' acceptance of the FWDA Parks will result in an increase in Metro Parks' operations and maintenance costs. These additional costs will be funded by the City through the 2016 Interlocal Agreement Relating to Parks and Facility Operations and Maintenance and pursuant to the Fourth Amendment to Agreement of Marina Lease by and between Foss Waterway Development Authority and Foss Waterway Management LLC dated January 1, 2015, which Lease will be assigned from the FWDA to the City, or such other funding source that is mutually agreeable to Metro Parks and the City. The Parties acknowledge that the Fourth Amendment to Agreement of Marina Lease by and between Foss Waterway Development Authority and Foss Waterway Management LLC dated January 1, 2015, which Lease will be assigned from the FWDA to the City (as Landlord), specifies beginning in 2026, the Landlord has agreed to place the Annual Rent with the Greater Tacoma Community Foundation and dedicate it to the ongoing maintenance of the FWDA Parks. The Annual Rent is expected to be \$60,000 per year plus any increase in the CPI.

8. Indemnification.

A. Metro Parks Indemnification. Metro Parks shall defend, indemnify and hold FWDA and the City, and their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees, arising out of or resulting from the acts, errors or omissions of Metro Parks in performance of this Agreement, except for injuries and damages caused by the sole negligence or wrongful; acts or omissions of the City and/or FWDA. It is further specifically and expressly understood that the indemnification provided herein constitutes Metro Parks' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This

waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. City Indemnification. The City shall defend, indemnify and hold Metro Parks, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees, arising out of or resulting from the acts, errors or omissions of the City in performance of this Agreement, except for injuries and damages caused by the sole negligence or wrongful; acts or omissions of Metro Parks. It is further specifically and expressly understood that the indemnification provided herein constitutes the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

C. FWDA Indemnification. FWDA shall defend, indemnify and hold Metro Parks, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees, arising out of or resulting from the acts, errors or omissions of FWDA in performance of this Agreement, except for injuries and damages caused by the sole negligence or wrongful; acts or omissions of Metro Parks. It is further specifically and expressly understood that the indemnification provided herein constitutes the FWDA's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

D. Liability Limitation for Concurrent Negligence. In the event of liability for damages of any nature whatsoever arising out of the performance of this Agreement and caused by or resulting from the concurrent negligence of Metro Parks, the City and/or FWDA, each party's liability hereunder shall only be to the extent of that party's negligence.

9. Continuation and Survival of Representations, Warranties, Indemnities and Other Matters. All representations and warranties by the respective parties contained herein are intended to and shall remain true and correct as of the time of closing, shall be deemed to be material, and shall survive the execution and delivery of the deed and the transfer of title. All indemnities by the respective parties contained herein are intended to and shall survive the execution and delivery of the deed and the transfer of title. The City's agreements regarding Waterway Park as specified in Section 6.b. and the agreements for funding for parks as provided in Section 7 shall survive the execution and delivery of the deed and the transfer of title.

10. No Third Party Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any person other than the FWDA, Metro Parks and the City any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the FWDA, Metro Parks and the City.
11. Notices. All notices, demands or requests that may or are required to be given by any party to another under this Agreement shall be given in writing and delivered personally, sent by U.S. certified mail, postage prepaid, return receipt requested, or nationally recognized overnight air carrier, or by electronic mail (e-mail) and addressed to the parties at the addresses below:

If to FWDA: Norman Gollub
Foss Waterway Development Authority
535 Dock Street, Suite 204
Tacoma, WA 98402-4630
E-Mail: ngollub@theafoss.com

Copy to: Name
[Address]
[Address]
Attn:
E-Mail:

If to Metro Parks: Debbie Terwilleger
Metropolitan Park District of Tacoma
4702 S. 19th Street
Tacoma, WA 98405-1175
E-Mail: debbiet@tacomaparks.com

Copy to: Mark R. Roberts
Roberts Johns & Hemphill PLLC
7525 Pioneer Way, Ste. 202
Gig Harbor, WA 98335
E-Mail: mark@rjh-legal.com

If to City: Jennifer S. Hines, Esq.
Real Property Services Manager
City of Tacoma
747 Market Street, Room 737
Tacoma, WA 98402
E-Mail: jhines@cityoftacoma.org

Copy to: Steve Victor

Assistant City Attorney
City of Tacoma
747 Market Street, Room 1120
Tacoma, WA 98402
E-Mail: svictor@cityoftacoma.org

Notices shall be deemed to have been given upon receipt or attempted delivery where delivery is not accepted. Any party to this Agreement may change its address and/or those receiving copies of notices upon written notice given to the other.

12. Modification. Any changes to this Agreement requested by any party may only be effected if mutually agreed upon in writing and signed by duly authorized representatives of all parties.
13. Time. Time is of the essence of this Agreement and of each covenant and act that is to be performed at or within a particular time.
14. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.
15. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, then that provision and the remainder of this Agreement shall continue in effect and be enforceable to the fullest extent permitted by law. It is the intention of the Parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provisions shall have the meaning that renders it valid.
16. Interpretation. The headings or titles of the sections of this Agreement are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of any provision of this Agreement. All provisions of this Agreement have been negotiated at arm's length and this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision hereof. This Agreement shall be interpreted and construed according to the laws of the State of Washington; venue shall only be in Pierce County, Washington.
17. Dispute Resolution. In the event of a dispute between the Parties arising out of or related to the Agreement, the Parties agree to follow the procedures in this Section prior to filing or initiating a lawsuit. The Parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the Metro Parks' Executive Director, the FWDA Executive Director and/or the City Manager. If those officials are unable

to resolve the dispute within a period of fifteen (15) days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. The Parties agree to participate in the mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally between the Parties to the mediation.

18. Attorney's Fees. In any action arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees and costs.
19. Authority. Each party represents to the other that it has full power, authority and legal right to execute, deliver and perform this Agreement, and all other documents and certificates contemplated hereby, and the execution, delivery and performance thereof have been duly authorized.
20. Counterparts. This Agreement may be executed in counterparts for the convenience of the Parties, and such counterparts shall together constitute one Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date below each signature.

<p>CITY OF TACOMA, a Washington municipal corporation</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>	<p>FOSS WATERWAY DEVELOPMENT AUTHORITY, a Washington public corporation</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>
<p>METROPOLITAN PARK DISTRICT OF TACOMA, a Washington municipal corporation</p> <p>By: _____ Name: _____ Title: _____</p>	

Date: _____	
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EXHIBIT A
DEPICTION AND LEGAL DESCRIPTION OF FWDA PARKS
MELANIE JAN LAPLANT DRESSEL PARK



Property Name: Melanie Jan LaPlant Dressel Park
Parcel Numbers: 8950001971
Address: 1147 Dock Street
Square Footage: 30,597 SF or .70 acres

Assessor's Legal: Section 04 Township 20 Range 03 Quarter 24 TACOMA TIDELANDS:
TACOMA TIDELANDS S 1/2 L 12, L 13 & 14 & N 1/2 L 15 B 62 SEG G 0662

Site History: Not under the Area Wide Consent Decree. DOE No Further Action Letter applies.
DOE Restrictive Covenants apply; no pile driving in or along shoreline.

WATERWAY PARK



Property Name: Waterway Park
Parcel Numbers: 8950001791 (South Parcel) and 8950001761 (North Parcel)
Address: 2130 & 2110 E. "D" Street
Square Footage: 85,813 SF and 75,000 SF: combined 160,81 SF or 3.69 acres

Assessor's Legal:

8950001791 - Section 04 Township 20 Range 03 Quarter 43 TACOMA TIDELANDS: TACOMA TIDELANDS SE 04 & NE 09 20-03E SEG'D FOR TAX PURPOSES ONLY PER R90962 DESC AS L 13 THRU 23 B 55 TOG/W L 18 THRU 23 B 7119 & TOG/W L 14 THRU 23 B 7120 OF TACOMA LD CO 1ST EXC FOLL DESC PROP: COM SE COR L 23 SD B 7120 TH N ALG E LI SD B 7120 44 FT TH SWLY TO A PT ON S LI L 23 SD B 7120 SD PT 125 FT W OF SE COR L 23 TH E ALG S LI SD L 23 DIST OF 125 FT TO POB EXC THAT POR CYD TO CY OF TACOMA FOR R/W PER ETN 4074655 OUT OF 179-0 2071190020, 003-1, 2071200020, 003-1 SEG I-0656CL 04-16-97 DC05/26/06LW

8950001761 - Section 04 Township 20 Range 03 Quarter 43 TACOMA TIDELANDS: TACOMA TIDELANDS SE 04 & NE 09 20-03E L 3 THRU 12 B 55 EXC THAT POR CYD TO CY OF

TACOMA FOR R/W PER ETN 4074656 OUT OF 176-0, 177-0 & 178-0 SEG I0656CL 04/16/97
DC05/26/06LW

Current Use: All of Parcel 8950001791 and most of parcel 8950001761 is leased to Berg Scaffolding by the FWDA. FWDA may use the area waterward of the fence line for public access and human powered watercraft activities.

Berg Lease: Expires April 23, 2021. Rent \$2,785.38 per month plus leasehold excise tax.

Site History: Not under the Area Wide Consent Decree. A Consent Decree with DOE is in force on parcel 8950001761 which is known as the American Plating Site. Remediation has been completed by the FWDA and a site closure will occur with redevelopment of the property as a park.

**GEORGE H. WEYERHAEUSER JR. PARK
(FWDA Parcels)**



Portion from FWDA to Metro Parks



Property Name: George H. Weyerhaeuser Jr. Park
Parcel Numbers: 8950001822 (north parcel) 8950001832 (south parcel) to Metro Parks
Address: 2119 & 2101 Dock Street
Square Footage: 30,000 SF & 23,997 SF combined total 1.24 acres
Assessor's Legal:

8950001822 - Section 04 Township 20 Range 03 Quarter 34 TACOMA TIDELANDS LAND ONLY LOT 1 THRU 6 INCL BLK 57 SUBJ TO EASE OF RECORD PER AFN 83-08-11-0336 (DCD1078CA10-24-85)

8950001832 - Section 04 Township 20 Range 03 Quarter 34 TACOMA TIDELANDS: TACOMA TIDELANDS L 7 THRU 12 B 57 SUBJ TO EASE EXC FOLL DESC PROP BEG SW COR B 57 TH N ALG W LI SD B 57 TO NW COR L 7 SD B 57 TH E ALG N LI SD L 7 DIST OF 12 FT TH SELY TO A PT ON S LI SD B 57 SD PT BEING 68 FT E OF SW COR SD B 57 TH W ALG S LI SD B 57 68 FT TO POB SE OF SW 04-20-03E APPROX 24,000 SQ FT OUT OF 183-0 SEG S-0347 DL ES

Site Characteristics: Environmental clean-up of shoreline to inner harbor line by Department of Ecology. Capping with 6" of impervious surface or 3' of clean soil by City of Tacoma with development of park. Restrictive Covenants for protection of the in-water capping system under the Superfund clean-up. Restrictive Covenants on file at Foss Waterway Development Authority or documents are available through Pierce County Records. The bank is part of the City's habitat enhancement area under the Superfund clean-up.

EXHIBIT B
Hazardous Substances Indemnification Agreement

EXHIBIT C
Gift Agreement



MEMORANDUM

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

FROM: Debbie Terwilleger, Director of Planning & Development

SUBJECT: Titlow Lagoon Fish Barrier Culvert Replacement Design, Accepting and Appropriating \$990,000 from the Washington State Department of Transportation, 2019-2021 Transportation Budget

DATE: November 4, 2020

EXECUTIVE SUMMARY: This resolution accepts and appropriates \$990,000.00 (\$1M less \$10,000 State Administrative Fees) from the Washington State Department of Transportation, 2019-2021 Transportation Budget, Multimodal Account for Titlow Lagoon Fish Barrier Culvert Replacement Design and authorizes the Executive Director to enter into an agreement with the State for the funding.

Funds will be used to prepare engineering design documents for the replacement of the culvert beneath the BNSF railroad tracks at Titlow Lagoon with a trestle bridge to allow for greater hydraulic connectivity between the lagoon and Puget Sound. The expanded opening provided by the trestle will allow for easier passage for juvenile salmon to access to the estuarine habitat of Titlow Lagoon for the benefit of multiple salmon populations that migrate along this shoreline zone of South Puget Sound

BACKGROUND: Since 2008, Metro Parks has partnered with South Puget Sound Salmon Enhancement Group, People for Puget Sound, citizen advisory groups and steering committees and through public engagement to craft long term restoration plans for Titlow Lagoon. The Titlow Park Master Plan of 2010 was followed by a feasibility study in 2010 to explore further opportunities for improved fish passage and lagoon enhancement.

The replacement of culvert beneath the BNSF railroad tracks is a critical infrastructure piece necessary for future estuary restorations to be fully effective. Included in the design effort funded by this agreement will be an analysis of the impacts of projected sea level rise and storm surge on the lagoon environment should the trestle bridge be constructed the constraints of the existing culvert be eliminated. The future construction of the trestle bridge would only proceed if proper measures put in place to protect and enhance the integrity of the park overall.

Staff is requesting that the Board of Park Commissioners Accept and Appropriate the 2019-2021 State Funding of \$990,000 from Washington State Department of Transportation, and authorize the Executive Director to enter into an agreement with the State for the funding.

FISCAL IMPACT: The total cost of the Titlow Lagoon Fish Barrier Culvert Replacement Design Project is provided by the \$990,000 from the Washington State Department of Transportation, 2019-2021 Transportation Budget.

Insert Financial Table Here

ADDITIONAL INFORMATION: For additional information, please contact Debbie Terwilleger, Director of Planning & Development, at 253-305-1086.

**METROPOLITAN PARK DISTRICT OF TACOMA
RESOLUTION NO. CXX-XX**

**TITLOW LAGOON FISH BARRIER CULVERT REPLACEMENT DESIGN PROJECT
ACCEPTING AND APPROPRIATING \$990,000 FROM THE WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION 2019-2021 CAPITAL
BUDGET**

WHEREAS, Titlow Park is owned, managed and maintained as a beloved signature community park for active and passive recreation by Metro Parks Tacoma; and

WHEREAS, Titlow Park has significant ecological value as a critical marine park on the shores of South Puget Sound; and

WHEREAS, Metro Parks is joined in its vision for the restoration of Titlow Lagoon by its partners South Puget Sound Salmon Enhancement Group, People for Puget Sound, and numerous citizen advisory groups and steering committees over a decade of analysis and planning; and

WHEREAS, prior master plans and studies for Titlow Lagoon have documented and re-affirmed the high value of this estuary setting for its ecological services, habitat and educational value; and

WHEREAS, the existing culvert connection between Titlow Lagoon and Puget Sound has been identified as a barrier to juvenile salmonid passage and that a clear-span trestle bridge would provide for greater hydraulic connectivity and increased juvenile salmonid access to estuary habitat; and

WHEREAS, the Washington State Legislature's Engrossed Substitute House Bill 2322, Chapter 219, Laws of 2020 (pv), Section 309 (1) and has appropriated \$1,000,000 (One million dollars) in STATE funds and is included in the LEAP transportation document;

WHEREAS, in chapters 47.06A, 47.66 and 47.76 RCW the Washington State Legislature has determined freight rail systems are important elements of the STATE's multimodal transportation system and permits the STATE to provide financial assistance to cities, counties, ports, and railroads for the purposes of acquiring, rebuilding, rehabilitating, or improving rail lines necessary to maintain use of the essential rail service; and

WHEREAS, Metro Parks in partnership with South Puget Sound Salmon Enhancement Group has advocated for funds to complete the engineering and design services for the railroad trestle project; and

WHEREAS, the 2019-2021 State Transportation Budget includes an appropriation of \$1M (\$10,000 less State Administrative Fees) from WA State Department of Transportation, Multimodal Account for the Titlow Lagoon Fish Barrier Culvert Replacement Design Project; now, therefore, be it

RESOLVED, that the Board of Park Commissioners accept and appropriate \$990,000 from WA State Department of Transportation, Multimodal Account for the Titlow Lagoon Fish Barrier Culvert Replacement Design Project; and be it

FURTHER RESOLVED, that the Executive Director is authorized to execute an agreement for the \$990,000 contribution to the Titlow Lagoon Fish Barrier Culvert Replacement Design Project.

The foregoing resolution was adopted by the Board of Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on _____, 2020.

President

ATTEST:

Secretary

Clerk



Rail, Freight and Ports Division State Funding Agreement		Agency and Address Metro Parks Tacoma 4702 S 19 th St Tacoma, WA 98405 Statewide Payee Number:
Agreement Number GCB 3349	Maximum Amount Authorized \$990,000	Location and Description of Work (See also Exhibit "A") Development of construction plans and specifications suitable for permitting and constructing a complete replacement of a fish barrier culvert under the BNSF mainline that runs from the Titlow Park lagoon to Puget Sound.

This AGREEMENT is made and entered into between the Washington State Department of Transportation, hereinafter called the "STATE," and the Metropolitan Park District of Tacoma, the above named organization, hereinafter called the "AGENCY."

Recitals

WHEREAS, the Washington State Legislature’s Engrossed Substitute House Bill 2322, Chapter 219, Laws of 2020 (pv), Section 309 (1) and has appropriated \$1,000,000 (One million dollars) in STATE funds and is included in the LEAP transportation document;

WHEREAS, in chapters 47.06A, 47.66 and 47.76 RCW the Washington State Legislature has determined freight rail systems are important elements of the STATE’s multimodal transportation system and permits the STATE to provide financial assistance to cities, counties, ports, and railroads for the purposes of acquiring, rebuilding, rehabilitating, or improving rail lines necessary to maintain use of the essential rail service; and

NOW THEREFORE, pursuant to the above recitals that are incorporated herein as if fully set forth below and in consideration of the terms, conditions, covenants and performances contained in this AGREEMENT, or attached hereto and by this reference made a part of this AGREEMENT, **IT IS MUTUALLY AGREED AS FOLLOWS:**

Section 1 General

The general Scope of Work is defined in the Description of Work, above and attached hereto as Exhibit A and made part of this AGREEMENT and funded in accordance with the following Funding Table:

Type of Work		Estimate of Funding		
		(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated State Funds
Source of State Funds: <u>Multimodal Account</u>				
PE	a. Agency			
	b. Other			

	c. Other			
	d. State	\$990,000		\$990,000
	e. Total PE Cost Estimate (a+b+c+d)			
Right of Way	f. Agency			
	g. Other			
	h. Other			
	i. State			
	J. Total R/W Cost Estimate (f+g+h+i)			
Construction	k. Contract			
	l. Other			
	m. Other			
	n. Other			
	o. Agency			
	p. State			
	q. Total CN Cost Estimate (k+l+m+n+o+p)			
	r. Total Project Cost Estimate (e+j+q)	\$990,000		\$990,000

Plans, specifications, and cost estimates shall be prepared by the AGENCY in accordance with the current American Railway Engineering and Maintenance-of-Way Association (AREMA) and any standards applicable to the specific railroad involved with the project and the State of Washington Standard Specifications for Road, Bridge, and Municipal Construction and adopted design standards, unless otherwise noted.

All work performed under this AGREEMENT shall comply with applicable provisions of federal, state and local laws and regulations.

Section 2 Payment

The STATE, agrees to reimburse the AGENCY up to the “MAXIMUM AMOUNT AUTHORIZED” set forth in the Caption to this AGREEMENT, for the actual direct and related indirect costs expended by the AGENCY in the course of completing the specified PROJECT under this AGREEMENT. The MAXIMUM AMOUNT AUTHORIZED excludes the STATE’s costs of \$10,000 (Ten thousand dollars) to administer this AGREEMENT as detailed in the Funding Table.

The AGENCY will comply with Governmental Accounting Auditing and Financial Reporting Standards and applicable state law and local regulations, policies and procedures.

No payment will be made for work done prior to execution of this AGREEMENT.

Partial payments shall be made by the STATE, upon request of the AGENCY, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment. The AGENCY agrees to submit a final bill to the STATE within forty-five (45) days after the AGENCY has completed work.

The AGENCY agrees that all costs in excess of the amount authorized and the AGENCY’s matching funds shall be the responsibility of the AGENCY.

Section 3 RESERVED

Section 4. Term

This AGREEMENT shall become effective upon the date the last party signs the AGREEMENT. The AGENCY estimates the time to complete the Project will be approximately 24 months.

Section 5. Maintenance of Records and Audit Requirements

During the progress of the work, and for a period of not less than six (6) years from the date of final payment by the STATE to the AGENCY, records and accounts of the AGENCY related to the Project are to be kept available for inspection and audit by representatives of the STATE.

Copies of records shall be furnished to the STATE upon request and shall be maintained in accordance with accepted job cost accounting procedures as established in 48 CFR § 31. All costs must be supported by actual invoices and canceled checks. The AGENCY agrees to comply with the audit requirements contained herein, and to impose the same requirement on any consultant, contractor, or subcontractor who may perform work funded by this AGREEMENT.

The records to be maintained by the AGENCY shall include, but are not limited to, the following:

- a) Records that identify the sources and applications of funds for this AGREEMENT and contain information pertaining to outlays;
- b) Supporting source documents;
- c) All documentation underlying the preparation of the financial reports;
- d) Any other records which are required following notification of an amendment to the State of Washington or federal regulations which takes effect during the period in which costs are allowable; and
- e) Any other records necessary to disclose fully the amount and disposition of the funds provided to the AGENCY under this AGREEMENT and charged to the PROJECT, supported by documents evidencing in detail the nature and propriety of the charges, the total cost of each undertaking for which the assistance was given or used, the amount of the costs of the undertaking supplied by other sources, and other books, records, and documents needed for a full and complete verification of the AGENCY's responsibilities and all payments and charges under this AGREEMENT.

In the event that any litigation, claim or audit is initiated prior to the expiration of said six (6) year period, the records shall be retained until such litigation, claim, or audit involving the records is complete.

Section 6 Legal Relations

No liability shall attach to the AGENCY or the STATE by reason of entering into this AGREEMENT except as expressly provided herein.

Section 7 Independent Capacity

The employees or agents of each party who are engaged in the performance of this AGREEMENT shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

Section 8 Nondiscrimination

The AGENCY agrees to comply with all applicable state and federal laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of all subcontractors providing services or performing any work using funds provided under this AGREEMENT.

Section 9 Venue

For the convenience of the parties to this AGREEMENT, it is agreed that any claims and/or causes of action which the AGENCY has against the STATE, growing out of this Agreement or the project or program with which it is concerned, shall be brought only in the Superior Court for Thurston County.

Section 10 Termination

The Secretary of the Department of Transportation, or designee, may terminate this AGREEMENT if the funding becomes unavailable or otherwise determined to be in the best interest of the STATE. Provided, however, that the STATE shall reimburse the AGENCY for all costs and expenses related to the Project that are incurred prior to the date of termination and any costs of closing out the Project.

Section 11 Final Report and Final Inspection

Within ninety (90) days following the completion of the PROJECT and submission of the final billing for the PROJECT, a final report shall be submitted to the Director, Rail, Freight and Ports containing the following information:

Non-Capital Projects

1. A description of the project or program.
2. A summary of actual costs of the project or program.
3. An evaluation of the project or program. This should address aspects such as transportation and/or other benefits to the public.

Section 12 Supplement

This AGREEMENT may be modified or supplemented only in writing by the PARTIES.

Section 13 Indemnification

The GRANTEE shall indemnify and hold the STATE and all its officers and employees harmless from, and shall process and defend at its own expense all claims, demands, or suits at law or equity arising out of this AGREEMENT caused by the performance or failure to perform by the GRANTEE, its agents, employees and/ or its subcontractors of any and all duties prescribed by, or incidental to its performance under, this AGREEMENT; provided that nothing herein shall require the GRANTEE to indemnify or hold the STATE harmless against claims, demands, or suits based solely upon the negligent conduct of the STATE, its officers or employees; and provided further that if the claims, demands or suit is caused by or results from the concurrent negligence of (a) the GRANTEE’s agents or employees and (b) the STATE’s agents or employees, and involves those actions covered by chapter 4.24.115 RCW, this indemnity provision with respect to claims or suits based upon such negligence shall be valid and enforceable only to the extent of the GRANTEE’s negligence or the negligence of the GRANTEE’s agents or employees.

The GRANTEE agrees that its obligations under this Section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents while performing construction and/or maintenance for the PROJECT. For this purpose, the GRANTEE, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions chapter 51.12 RCW.

This indemnification and waiver shall survive the termination of this AGREEMENT for all claims, demands, or suits at law or equity arising out of this AGREEMENT during its term.

Section 14 Counterparts

This AGREEMENT may be executed in two counterparts, each of which shall be deemed to be an original having identical legal effect.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the date signed last by the PARTIES below.

Washington State Department of Transportation

By: _____
Ron Pate, PLS,
Director, WSDOT Rail, Freight, and Ports Division

Date: _____

TBD

By: _____
TBD

Date: _____

Approved as to form on behalf of STATE:

By: _____
James Nelson, Assistant Attorney General
State of Washington

Date: _____

By: _____
Shon Sylvia, Executive Director
Metro Parks of Tacoma

Date: _____

Any modification, change or revision to this AGREEMENT requires the further approval as to form by the Office of the Attorney General.

EXHIBIT A

Description of Work

Development of construction plans and specifications suitable for permitting and constructing a complete replacement of a fish barrier culvert under the BNSF mainline that runs from the Titlow Park lagoon to Puget Sound