

**Capital Improvement Committee Meeting (CIC)  
Agenda & Meeting Materials  
June 14, 2023 - 5:00 PM**

Metro Parks Headquarters  
4702 S 19th St.  
Tacoma, WA 98405



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This Capital Improvement Committee Meeting (CIC) will be held at Metro Parks Headquarters, 4702 S 19th St., Tacoma, WA 98405. You can also join the meeting remotely by following the instructions below: (either by online link or by phone)

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

Time: **June 14, 2023 5:00 PM Pacific Time (US and Canada)**

**Join Zoom Meeting Online by clicking the link below:**

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

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

**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**

**Wednesday, June 14, 2023  
5:00 PM**

**MINUTES FROM MAY 25, 2023**

**PROJECT STATUS REPORT**

**DISCUSSION ITEMS**

**ACTION ITEMS**

- Fort Nisqually Phase II – Contract Award to SHKS Architects
- Stanley Playfield - Tacoma Public Schools (TPS) for Playground Area

**FUTURE AGENDA TOPICS**

**ADJOURNMENT**



## BOARD OF PARK COMMISSIONERS CAPITAL IMPROVEMENT COMMITTEE

May 24, 2023  
5:00 PM  
MINUTES

**Attendees:** Commissioner Pointer, Commissioner Reid

**Staff Support:** **Marty Stump**, Deputy Director - Planning and Development; **Kristi Evans**, Capital Program Manager, Community and Neighborhood Parks; **Roger Stanton**, Capital Program Manager, Regional & ZEED; **Mary Kay Henley**, Planning Administration

**Acceptance of Minutes:** Minutes from the May 10, 2023, meeting were approved as written.

### Discussion Item

N/A

### Action Items

#### **Point Defiance Park Loop Trail Phase 1 - Sound Pacific Construction, LLC Change Order #3 BID# J2022-28**

- Roger reported this resolution authorizes the contract Change Order #3 to Sound Pacific Construction, LLC for Point Defiance Park Loop Trail Phase 1 in the amount of \$47,625.05. He led a discussion of the project's previous change orders that covered inadvertent discoveries needing to be addressed (old trolley rail line, rotten gazebo structure, relocation of utilities, etc.)
- This change order covers the costs of additional asphalt paving, additional over excavation of poor soil, slope drainage remediation, additional existing utility revisions, and revising proposed bollards to surface mount.
- Roger explained that Phase 1 of this project is almost complete and contingency funds remain. Final punch list items are being completed and include redoing some plantings, additional tree supports and mulch. He added the public has been using the trail for the past couple months.
- Commissioner Pointer wondered what a bollard was. Roger reported they are steel posts that deter vehicle access.
- Commissioner Reid asked about the topsoil content around the tennis courts, wondering if it was clay. Roger reported it is heavily compacted silt that is not impervious. He added the whole park was filled in the past with soil that doesn't drain very well.
- This item was accepted for moving forward to the full Board with a recommendation of approval.

### **Point Defiance View Points Infrastructure Improvements/Loop Trail Project BCRA, Inc, A&E Contract Amendment #3**

- This resolution authorizes an amendment of \$217,740 to the existing A&E Contract with BCRA Inc. for additional design services for the Loop Trail Project.
- Roger reported that funds go towards design package revisions that include utility additions, signage, split permitting approach into two phases, revisions to stormwater permitting, landscaping, and path guardrail designs. He added that the Owen Beach entry road project was handled as a separate project and never incorporated into this project.
- Commissioner Pointer noted these revisions haven't delayed the project. Roger reported the contractor has been working hard to stay current with the project's timeline even with changes.
- Marty added that Phase 2 of the project gets more complicated with shoreline permitting, additional surface water, wetland reviews, surveying, and cultural review. In addition, it is part of a biodiversity corridor and includes ASARCO contaminated soil that requires specialized handling. Commissioner Reid suggested including this information during the Board presentation.
- This item was accepted for moving forward to the full Board with a recommendation of approval.

### **Peck Sports Park Master Plan Contract Award to Walker/ Macy**

- This resolution authorizes a contract award for the Peck Sports Park Master Plan contract to Walker/Macy in the amount not to exceed \$93,750. The project's scope provides for a long-range Master Plan with the potential for design and construction improvements at Peck Athletic Complex.
- Marty explained this project has been discussed for a long time. The goal is to add park amenities to better serve the community. Currently staff are moving into a deeper discovery phase for Peck as the home for a much talked about baseball field.
- As background, Metro Parks has been working with Tacoma Public Schools (TPS) on plans to design an all-season multi-use sport field at Peck Athletic Complex for TPS and MPT sports teams. The all-season multi-use field would serve as the home field for Stadium High School and Hilltop Heritage Middle School baseball teams, and also be available for soccer, lacrosse, and other community sport's needs. The full Peck Sports Park master plan will include neighborhood park amenities and will explore the emerging principles of Community Sports Parks, informed by community feedback.
- Kristi explained a quick master planning effort was needed to help align with TPS's schedule. She reported an A&E Roster review was conducted for local sports park experience and Walter/Mary was determined to be the most qualified. They have done work with Metro Parks in the past and can start work quickly. Marty added they work closely with urban design and are familiar with the area, recently completing Martin Luther King Way streetscape work as part of the Sound Transit Link project.
  - Commissioner Pointer asked if they have experience with baseball fields. Kristi reported yes, adding the multi-use field will also support soccer and lacrosse.

- It was explained this is an overall master plan that includes TPS. It will take into consideration future community needs and include public outreach. The first public meeting is slated for June 5<sup>th</sup>.
- Commissioner Reid asked the difference between hardball and softball fields. It was explained that hardball fields are larger and have mounds while softball fields are flat.
- Marty added that because this falls within Metro Park's property, we are taking the lead on making sure all plans work together. We also need to determine other amenities the community may want. Not just playfields but other court surfaces like basketball, pickleball typically found at neighborhood parks.
- Commissioners asked about lighting, noting the old lighting needs to be replaced with a new system. It was reported that TPS isn't including new lighting, however it can be included in the master plan for future installation.
- Commissioner Pointer asked when construction will start. It was reported that construction would start in spring and be completed by the end of summer or the start of the new school year.
- Commissioner Pointer asked about the project's funding source. Marty stated this is a phased project and TPS is primarily funding the 1<sup>st</sup> phase that will focus upon the baseball field and primary support facilities. MPT has earmarked modest funding through its CIP and is looking at ways to grow this amount through 2024 grant applications.
- This item was accepted for moving forward to the full Board with a recommendation of approval.

### **Granting Two Easements from Metro Parks Tacoma to Pierce County in Swan Creek Park**

- This resolution would grant Pierce County two (2) easements for the surface water enhancement project at Swan Creek. Kristi explained the project's goal is to minimize creek bank erosion by stabilizing the channel bed and bank slopes, helping to improved salmon migration. She reported that Pierce County needs both a temporary easement for construction and a permanent easement for future maintenance. She reported the Puyallup Tribe of Indians has been consulted and Metro Park's attorney has reviewed both documents.
- Commissioner Reid asked if this project has a construction fish window. Kristi was unsure since a construction schedule hasn't been established but we are confident that the project is scheduled around salmon spawning calendar. Commissioner Reid also asked if there is any recourse (revoke easement) for environmental harm caused by structure failure. Kristi said this is a good question and will confer with our attorney before the next Board meeting.
- Because work is within park boundaries, both Commissioners wanted to make sure both the land and the public are protected.
- Commissioner Reid asked the distance of creek work, wondering if it would go past Eastside Community Center or First Creek Middle School. Kristi said no, it will stay within Swan Creek at an estimated 900 feet. Staff agreed to bring an image of the referenced area to the Board meeting presentation to help with visualization.
- This item was accepted for moving forward to the full Board with a recommendation of approval.

### **Other Discussion Items**

- Commissioner Reid reported receiving community input that two areas need additional ADA trail updates: Owen Beach's outer loop and Swan Creek's pipeline trail are not wide enough for 3-wheel bikes. Kristi said staff will follow up and fix this issue.
- Commissioners asked if Metro Park's is planning anything for 4<sup>th</sup> of July. Staff will check, adding something may be planned for Ruston Way.

**Meeting Adjourned**



**MEMORANDUM**

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

FROM: Debbie Russell, Director of Business, Administration and Planning

**SUBJECT: Fort Nisqually Phase II – Contract Award to SHKS Architects**

DATE: June 21, 2023

**EXECUTIVE SUMMARY:** This resolution authorizes an A&E Contract with SHKS Architects to provide Design Development plans through Construction Administration for the Phase II building improvements at Point Defiance Park’s Fort Nisqually Living History Museum in the amount of \$291,000.

**BACKGROUND:**

Phase I of the Point Defiance Park Fort Nisqually facility improvements included a Facilities Condition Assessment and Report (FCAR). The FCAR studied facility life safety issues, building exteriors & mechanical systems, building life cycle, structural, utilities, code compliance and access to ADA accommodations for patrons, volunteers, and staff. The report recommendation to prioritize improvements to the Clerk’s House, the Sale Shop, the Kitchen, and the Wash House buildings.

Phase II of the facility improvements implement the design and construction of phase two based on the findings of the FCAR. Buildings to be improved via Phase II are:

- Demolition of existing and design and construction of a new Clerk’s House
- Improvements to Sales Shop
- Improvements to Kitchen building

This resolution authorizes an A&E contract with SHKS Architects to design a replacement Clerk’s House, and improvements to the Sales Shop and the Kitchen building.

**FISCAL IMPACT:** A scope of services has been negotiated with SHKS Architects in the amount of \$291,000. The total funds allocated to this project, in the amount of \$2,277,016, are from the Metro Parks Tacoma 2014 UTGO Bond Funds, Parks Operating budget, and a Washington State Heritage grant. Other project costs include special studies, survey, commissioning, permits, and furniture, fixtures, and equipment.

**Funding**

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14UTGO Regional Parks & Attractions Point Defiance Park	\$ 810,186
WA State Heritage Grant	\$ 367,630
14UTGO Historical & Cultural Landmarks	\$ 781,200
Point Defiance Park Operating Fund	\$ 318,000
<b>Total</b>	<b>\$ 2,277,816</b>

**Project Budget**

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Planning and Design	\$ 350,875
Phase 1 Construction (including tax)	\$ 1,654,500
Other Project Costs	\$ 100,000
Construction Contingency	\$ 150,000
1% for Art	\$ 15,000
<b>Total</b>	<b>\$ 2,277,816</b>

**ADDITIONAL INFORMATION:** For additional information, please contact Debbie Russell, Director of Business, Administration and Planning at (253) 305-1086 or [debbie.russell@tacomaparks.com](mailto:debbie.russell@tacomaparks.com).



**METROPOLITAN PARK DISTRICT OF TACOMA**

**RESOLUTION NO. PWXX-XX**

**FORT NISQUALLY PHASE II  
A&E CONTRACT AWARD TO SHKS ARCHITECTS**

WHEREAS, the Board of Park Commissioners of the Metropolitan Park District of Tacoma desire to make improvements to the Point Defiance Park Fort Nisqually Living History Museum; and

WHEREAS, it was determined that architecture and engineering services for the Point Defiance Park Fort Nisqually Living History Museum Project was needed resulting in request for qualifications; and

WHEREAS, SHKS Architects was selected to from a review of seven (7) Statements of Qualifications (SOQ's) that were obtained from qualified A&E teams in response to Metro Parks' public solicitation; and

WHEREAS, SHKS Architects was asked to provide full design, permitting, construction documents and construction administration services for the Point Defiance Park Fort Nisqually Living History Museum Phase II; and

WHEREAS, funds for the project are provided from the Metro Parks Tacoma 2014 UTGO Capital Improvement Bond Funds, and a Washington State Heritage Grant, and Park's Operating Fund; Now, therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma that the Executive Director is authorized to execute a contract with SHKS Architects for the Point Defiance Park Fort Nisqually Living History Museum Phase II Project in the amount of \$291,000.00.

The foregoing resolution was adopted by the Board of Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Clerk



**MEMORANDUM**

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

FROM: Debbie Russell, Director of Business, Administration and Planning

**SUBJECT: Lease of Stanley Playfield Playground Area by Tacoma School District No. 10**

DATE: May 26, 2023

**EXECUTIVE SUMMARY:** This resolution authorizes the Executive Director to negotiate final terms and enter into a lease of playground area at Stanley Playfield (shown in Exhibit A) with Tacoma School District No. 10.

**BACKGROUND:** Metro Parks Tacoma partners with Tacoma School District No. 10. to meet their joint needs of providing gaps in service for the communities they serve through safe open space and recreational programming.

The agencies have agreed to change the location of the development and construction of athletic fields from Stanley Playfield to Peck Athletic Complex that will better align with community needs and meet the programming and amenity needs of the Tacoma School District and Metro Parks Tacoma.

This 5-year lease would allow the School district to fence off the playground area for the safety of students playing during school hours, while allowing public access after school hours.

This timeframe will allow sufficient time for the agencies to develop and agree upon a master plan for the entire site at Stanley Playfield.

**FISCAL IMPACT:** The Tacoma School District No. 10 agrees to provide the non-profit/government partner rental rate of \$1.00 on a monthly basis, as well as provide park improvements, such as building a fence that connects to the playground structure, shown in Exhibit B.

**ADDITIONAL INFORMATION:** For additional information, please contact Debbie Russell, Director of Business Administration and Planning at (253) 305-1086 or [debbie.russell@tacomaparks.com](mailto:debbie.russell@tacomaparks.com).

**METROPOLITAN PARK DISTRICT OF TACOMA**

**RESOLUTION NO. RXX-23**

**LEASE BY AND BETWEEN THE TACOMA SCHOOL DISTRICT NO. 10  
AND THE METROPOLITAN PARK DISTRICT OF TACOMA  
FOR THE STANLEY PLAYFIELD PLAYGROUND AREA**

WHEREAS, the Board of Park Commissioners of the Metropolitan Park District of Tacoma desires to maintain quality facilities at Stanley Playfield; and

WHEREAS, Metro Parks has shifted the development of athletic field and programming from Stanley Playfield to the Peck Athletic Complex; and

WHEREAS, Metro Parks is committed to explore future uses of Stanley Playfield for the benefit of the community; and

WHEREAS, the Tacoma School District No. 10 is a government agency and long-term partner with Metro Parks providing complementary community programming services; and

WHEREAS, the Tacoma School District No. 10 requires a lease of the playground space to provide safe and secure services during the master planning of a new facility and school yard at Stanley Playfield; Now, therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma to authorize the Executive Director to negotiate final terms and enter into a lease with Tacoma School District No. 10 for the playground area at Stanley Playfield.

The foregoing resolution was adopted by the Board of Park Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on \_\_\_\_\_2023.

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Clerk

## PLAYGROUND LEASE AT STANLEY PARK

THIS PLAYGROUND LEASE ("Lease") is dated June 15, 2023 (for reference purposes only) and is by and between the Metropolitan Park District of Tacoma ("Metro Parks") and the Tacoma School District No. 10 (the "District"). The District and Metro Parks hereby agree as follows

### 1. LEASE PREMISES; TERM AND TERMINATION.

1.1. Premises. In consideration of the terms and covenants of this Lease, Metro Parks leases to the District, and the District leases from Metro Parks, that certain real property within Stanley Park depicted on Exhibit "A" located in Tacoma, Washington the "Premises".

1.2. Term. The lease term shall commence immediately upon mutual execution of this Lease and terminate on July 1, 2028 unless terminated sooner pursuant to Section 1.3.

1.3. Termination. Either Party may terminate this Lease upon six (6) months advance written notice.

2. RENT. The District shall pay to Metro Parks rent for the entire lease term, in advance, one dollar (\$1.00). In addition, the District shall pay to Metro Parks any and all leasehold excise taxes, real and personal property taxes, regular and special assessments, license fees and other taxes or charges of any kind and nature payable by Metro Parks as a result of any public or quasi-public authority, private party, or levy, assessment or imposition against, or arising out of this Lease or Metro Parks' ownership of or interest in the Premises (collectively referred to as the "Charges"). Metro Parks will provide the District from time to time with invoices for the Charges, if there are any. The District shall pay to Metro Parks the amount of the Charges set forth on such invoices on or before thirty (30) days after receipt of Metro Parks' invoice. All payments required to be made by the District to Metro Parks shall be payable to Metro Parks at the address set forth below or at such other address as Metro Parks may specify from time to time by written notice.

### 3. USE.

3.1. The Premises shall be used only for the purposes of a playground.

3.2. The District shall have the exclusive right to use and occupy the Premises during regular school hours. At all other times, the general public can use the Premises.

3.3. The District shall comply promptly with all applicable laws, rules, and regulations made by any governmental authority having jurisdiction over the Premises or

portion thereof related to or arising out of the District's use. This includes but is not limited to Tacoma Municipal Code Chapter 8.27 (the Park Code), provided that in the event of a conflict between the Park Code and this Lease, the terms of this Lease shall control.

3.4. The District shall not allow the use of drones or other powered flying devices on the Premises or portion thereof unless otherwise approved in writing by Metro Parks and proof of appropriate insurance.

#### 4. **CONDITION OF THE PREMISES / IMPROVEMENTS.**

4.1. The District has taken possession of the Premises and acknowledges and agrees that the Premises are in good and satisfactory condition. The District further acknowledges and agrees that no representations as to the condition of the Premises have been made by Metro Parks and the District has accepted the Premises "as is," having had a full and complete opportunity to inspect the same.

4.2. Metro Parks hereby approves the site plan for the placement of a fence and other improvements as depicted on Exhibit B. At the expiration or earlier termination of this Lease, the District shall remove all the improvements as specified by Metro Parks.

4.3. Except as provided above, the District shall not construct any improvements upon the Premises without Metro Parks' prior written approval.

5. **MAINTENANCE.** The District shall at its own expense keep and maintain all parts of the Premises in good condition, promptly making all necessary repairs and replacements, including but not limited to regular removal of trash and debris. The landscaping and maintenance of the Premises shall be consistent with the adjacent Metro Parks' properties.

6. **ASSIGNMENT AND SUBLETTING.** The District shall not have the right, voluntarily or involuntarily, to assign, convey, transfer, mortgage or sublet the whole or any part of the Premises.

7. **INSURANCE.** The District shall at all times comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the fullest extent applicable. The District shall at all times during the term of this Lease, at its cost and expense, carry and maintain general public liability insurance against claims for bodily injury, personal injury, death, or property damage occurring or arising out of its use of the Premises.

#### 8. **INDEMNITY.**

8.1. Metro Parks shall not be liable to the District or the District's officers, directors, trustees, employees, agents, contractors, servants, guests, invitees or visitors (collectively, "The District Parties"), or to any other person for any damage, expense, loss or liability, including injury to person or damage to property on or about the Premises,

resulting from and/or caused in part or whole by the act or omission of the District, its employees, agents, servants, guests, invitees, and visitors, or of any other person entering upon the Premises, or caused by the condition of the Premises, or due to any other cause unless caused by the gross negligence of Metro Parks, and the District hereby releases Metro Parks from any such liability.

8.2. The District hereby releases and shall defend, indemnify and hold harmless Metro Parks and Metro Parks' officers, directors, trustees, employees, agents, contractors, servants, guests, invitees or visitors (collectively, "Metro Parks Parties") from claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage to property, that arises out of (a) any activity, work, condition or thing permitted or suffered to exist or done at the Premises or portion thereof; (b) the negligence or willful misconduct of any of the District Parties; and (c) any breach or default by the District in the performance of any obligation on the District's part to be performed under this Lease. This indemnity does not apply (i) to claims, suits, actions or liabilities to the extent they are caused by the negligent acts or omissions or willful misconduct of Metro Parks, its agents, employees, contractors or invitees, or (ii) to the indemnity in Section 12 regarding Hazardous Materials. In the absence of comparative or concurrent negligence on the part of any Metro Parks Parties, the foregoing indemnity shall also include reasonable costs, expenses and attorney's fees incurred in connection with any indemnified claim or incurred by Metro Parks in successfully establishing the right to indemnity (including in any bankruptcy proceeding). The District shall at Metro Parks' request assume the defense of any claim subject to this indemnity. Metro Parks agrees to cooperate fully with the District and the District's counsel in any matter where the District elects to defend, provided the District promptly reimburses Metro Parks for reasonable costs and expenses incurred in connection with its duty to cooperate. When the claim is caused by the joint negligence or willful misconduct of any of the District Parties and Metro Parks, the District's duty to indemnify and defend shall be proportionate to the District's allocable share of joint negligence or willful misconduct.

8.3. The indemnification obligations contained in this Section shall not be limited by any worker's compensation, benefit or disability laws, and the indemnifying party hereby waives any immunity that said indemnifying party may have under the Industrial Insurance Act, Title 51 RCW and similar worker's compensation, benefit or disability laws.

8.4. THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS LEASE THAT EACH OF THE INDEMNIFICATION PROVISIONS OF THIS LEASE (SPECIFICALLY INCLUDING BUT NOT LIMITED TO THOSE RELATING TO WORKER'S COMPENSATION BENEFITS AND LAWS) WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS LEASE.

## 9. **DAMAGE TO PREMISES / CONDEMNATION.**

9.1. If the Premises or any portion thereof is damaged or destroyed, Metro Parks may terminate this lease as to the damaged or destroyed portions and Metro Parks shall

have no obligation to repair or replace the damaged or destroyed portions nor any liability to the District for its loss of use of the damaged or destroyed portions. If due to such damage or destruction the District believes in its use is detrimentally affected, the District may terminate this Lease.

9.2. If all or any portion of the Premises is taken for any public or quasi-public use under government law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively, "Taking"), this Lease shall terminate when the physical taking of the Premises occurs and Metro Parks shall have no liability to the District for its loss of use of the Premises or portion thereof. If any part of the Premises is subject to a Taking, the District may terminate this Lease or continue this Lease as to the remaining premises but without abatement of any of the District's obligations hereunder. Metro Parks shall receive the entire award for any Taking of the Premises or portion thereof.

10. **MECHANIC'S LIENS.** The District shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature upon, or in any manner to bind, the interest of Metro Parks in the Premises in favor of any person dealing with the District, including those who may furnish materials or perform labor for any construction or repairs, and each such lien shall attach to, if at all, only the leasehold interest granted to the District by this instrument. The District will pay or cause to be paid all sums due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon. The District will discharge, by bond or otherwise, any mechanic's lien filed against the Premises or part thereof for work claimed to have been done for, or materials claimed to have been furnished to the District within ten (10) days after filing. The District will indemnify, defend and hold Metro Parks harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of the Metro Parks in the Premises or under the terms of this Lease.

11. **NOTICES.** All notices, demands or requests which may or are required to be given by one party to the other under this Lease shall be given in writing and hand delivered, or sent by United States registered or certified mail, postage prepaid, return receipt requested, and addressed to the Metro Parks' address or the District's address below, as the case may be. Notices shall be deemed to have been given upon receipt or attempted delivery when delivery is not accepted. Either party may change its address upon notice given to the other.

METRO PARKS:

Metropolitan Park District of Tacoma  
Attn: Executive Director  
4702 South 19<sup>th</sup> Street  
Tacoma, WA 98405

THE DISTRICT:

Tacoma School District  
Attn: Superintendent  
P.O. Box 1357  
Tacoma, WA 98401

## 12. **HAZARDOUS MATERIALS.**

12.1. The term "Hazardous Materials" refers to any substances, materials and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation or order. The term "Hazardous Materials" shall not include any equipment or products utilized in normal school operations.

12.2. The District accepts the Premises for Portables "as-is" and Metro Parks is not required to remove and/or remediate any Hazardous Materials on, under, in, above, to, or from the Premises for Portables. The District hereby releases the Metro Parks Parties from any claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage that arises out of or is related to any Hazardous Materials on, under, in, above, to, or from the Premises for Portables. The District shall defend, indemnify and hold Metro Parks and the Metro Parks Parties harmless from claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage to property, by the District, it's officers, directors, trustees, employees, agents, contractors, servants, guests, invitees or visitors that arises out of the District's use and/or occupancy of the Premises for any reason and that is related to any Hazardous Materials on, under, in, above, to, or from the Premises.

12.3. The District shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials on, under, in, above, to, or from the Premises or portion thereof except as such Hazardous Materials are (i) used, stored and disposed of in conformance with manufacturer recommendations and all applicable legal requirements, (ii) are used in connection with the District's permitted Use under Section 3 herein; and (iii) used in normal school operations. Provided, however, that the provisions of this Section 12.3 and the provisions of Section 12.4 below do not apply to any Hazardous Materials present on, under, in, above, to, or from the Premises or portion thereof prior to the District's occupancy so long as the District does not cause or contribute to the exposure, release or discharge of such preexisting Hazardous Materials.

12.4. In the event of a failure by the District to comply with the requirements of Section 12.3 the following shall apply:

12.4.1. the District shall indemnify, defend and hold the Metro Parks Parties harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (collectively "Remedial Work") relating to Hazardous Materials required by, or incurred by Metro Parks or any entity or person with a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release or discharge of any Hazardous Material on, under, in, above, to, or from the Premises;



12.4.2. if any Remedial Work is required under any applicable federal, state or local law during the term of this Lease, the District shall perform or cause to be performed the remedial work in compliance with such law, regulation or order; and

12.4.3. all Remedial Work shall be performed by one or more contractors under the supervision of a consulting engineer, each selected by the District and approved in advance in writing by Metro Parks. If the District does not commence the Remedial Work in a timely fashion or does not diligently prosecute the Remedial Work to completion, Metro Parks may, but shall not be required to cause the remedial work to be performed, subject fully to the indemnification of this paragraph.

12.5. THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS LEASE THAT EACH OF THE RELEASE AND INDEMNIFICATION PROVISIONS OF THIS LEASE RELATING TO HAZARDOUS MATERIALS WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS LEASE.

13. **MISCELLANEOUS.**

13.1. No Waiver. No waiver by the District or Metro Parks of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the District or Metro Parks of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary obtaining such party's consent to or approval of any subsequent act. No waiver shall be effective unless it is in writing, executed on behalf of the District or Metro Parks.

13.2. Captions and Governing Law. The captions inserted in this Lease are for convenience only, they in no way define, limit or otherwise describe the scope or intent of this Lease, and shall not be used to interpret or construe this Lease. This Lease shall be interpreted in accordance with the fair meaning of its words and both parties certify they either have been or have had the opportunity to be represented by their own counsel and that they are familiar with the provisions of this Lease, which provisions have been fully negotiated, and agree that the provisions hereof are not to be construed either for or against either party as the drafting party. This Lease shall be governed by the laws of the State of Washington.

13.3. Amendment. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties.

13.4. Survival. All obligations of the District hereunder not fully performed as of the expiration or earlier termination of this Lease.

13.5. Time. Time is of the essence of this Lease with respect to the performance of every provision in which time of performance is a factor.

13.6. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

13.7. Recording. Neither party shall record this Lease or a memorandum thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates specified below.

**METRO PARKS:**

METROPOLITAN PARK DISTRICT  
OF TACOMA

By: \_\_\_\_\_

Shon Sylvia  
Executive Director

Dated: June \_\_\_\_, 2023.

**THE DISTRICT:**

TACOMA SCHOOL DISTRICT NO. 10

By: \_\_\_\_\_

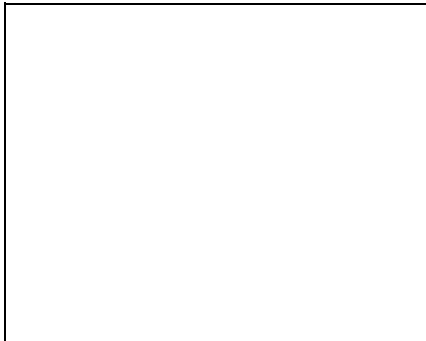
Joshua J. Garcia, Ed. D.  
Superintendent

Dated: June \_\_\_\_, 2023.

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF PIERCE            )

I certify that I know or have satisfactory evidence that Joshua J. Garcia is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the Superintendent for the Tacoma School District No. 10, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June \_\_\_\_\_, 2023.



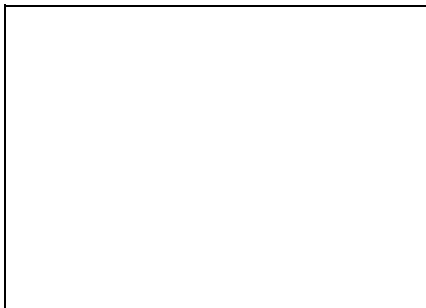
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\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF PIERCE            )

I certify that I know or have satisfactory evidence that Shon Sylvia is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of the Metropolitan Park District of Tacoma, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June \_\_\_\_\_, 2023.



(Use this space for notary stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A**  
**DEPICTION OF THE PREMISES**



**EXHIBIT B**  
**DEPICTION OF IMPROVEMENTS**