

**METROPOLITAN PARK DISTRICT
OF TACOMA**



AGENDA

February 12, 2024

6:00 P.M.

Metro Parks Headquarters

4702 S 19th St.

Tacoma, WA 98405

Join Remotely

Via Telephone: 1-253-215-8782

Enter Meeting ID: 847 2386 9833

Participant ID: no ID needed just press #

Join Zoom Meeting

<https://metroparkstacoma-org.zoom.us/j/84723869833>

MEETINGS ARE RECORDED
AND MAY BE HEARD UPON REQUEST

COMMISSIONERS

ANDREA SMITH, PRESIDENT

TIM REID, CLERK

AARON POINTER

ROSIE AYALA

MATTHEW MAUER

6:00 P.M. **CALL TO ORDER**

LAND ACKNOWLEDGEMENT

ROLL CALL

FLAG SALUTE

SPECIAL PRESENTATIONS

BLACK HISTORY MONTH PROCLAMATION

PRESIDENT'S REPORT

STANDING COMMITTEE & COMMISSION REPORTS

EXECUTIVE DIRECTOR'S REPORT

"Park District meeting sites are accessible to people who require special accommodations, please contact 305-1091 48 hours prior to the meeting time."



REGULAR MEETING

COMMUNITY COMMENTS

Community comment is encouraged to be submitted in advance of the meeting in written form. Please submit written comments to the Board by 4 p.m. on February 12, 2024 by e-mailing them to jenniferb@tacomaparks.com Comments will be compiled and sent to Board members in advance of the meeting. Comments may also be left on voicemail at 253-305-1091 by 4 p.m. on February 12, 2024. Verbal comments will also be allowed during the meeting both in-person and remotely. To request to speak during community comments, please press the Raise Hand button near the bottom of your Zoom window or *9 on your phone. All speakers will have up to three minutes to speak.

MINUTES

(5-10) MINUTES OF THE JANUARY 22, 2024 REGULAR BOARD MEETING

CONSENT AGENDA

(11-12) **RESOLUTION NO. C7-24:** APPROVAL OF WARRANTS CLAIM FUND FOR JANUARY 22, 2024
(Contact: Tania Wink, Chief Financial & Administrative Officer)

REGULAR AGENDA

PURCHASING RESOLUTIONS

(Requiring one reading for adoption)

(13-18) **RESOLUTION NO. P8-24:** AUTHORIZING PURCHASE OF GOODS AND SERVICES FOR METRO PARKS TACOMA

1. LAMAR ADVERTISING FOR BILLBOARD ADVERTISING IN THE AMOUNT OF \$136,000
(Contact: Alan Varsik, Director of Zoological & Environmental Education)
2. SEATTLE’S FINEST SECURITY & TRAFFIC CONTROL FOR SECURITY SERVICES IN THE AMOUNT OF \$535,000
(Contacts: Alan Varsik, Director of Zoological & Environmental Education & Mark Knowlden, Interim Director of Parks & Recreation)

PUBLIC WORKS PURCHASING RESOLUTIONS

(Requiring one reading for adoption)

(19-22) **RESOLUTION NO. PW9-24:** CONTRACT ACCEPTANCE FOR ARCHEOLOGICAL SERVICES MASTER AGREEMENT TO ENVIRONMENTAL SCIENCE ASSOCIATES, INC. (ESA)
(Contact: Debbie Russell, Director of Business Administration & Planning)

SINGLE READING RESOLUTION

(Requiring one reading for adoption)

(23-52) **RESOLUTION NO. R10-24** APPROVING THE PURCHASE AND SALE AGREEMENT FOR THE PROBST PROPERTY, ACCEPTING & APPROPRIATING A PIERCE COUNTY CONSERVATION FUTURES GRANT, AND PROVIDING FOR THE REIMBURSEMENT OF CERTAIN ACQUISITION COSTS FROM THE 2014 BOND ISSUE
(Contact: Debbie Russell, Director of Business Administration & Planning)

(53-55) **RESOLUTION NO. R11-24:** BUILDING LEASE BETWEEN THE BOY SCOUTS OF AMERICA PACIFIC HARBORS COUNCIL AND METROPOLITAN PARK DISTRICT OF TACOMA
(Contact: Debbie Russell, Director of Business Administration & Planning)

FIRST READINGS:

(Requiring two readings for adoption)

SECOND READING RESOLUTIONS

(Requiring two readings for adoption)

UNFINISHED BUSINESS

NEW BUSINESS

BOARD COMMENTS

ADJOURNMENT

UPCOMING BOARD MEETINGS

February 14, 2024	Capital Improvement Committee	5:00 PM	District Headquarters
February 23, 2023	Annual Board Retreat	9:00 AM	Point Defiance Zoo
February 26, 2024	Regular Park Board Meeting	6:00 PM	District Headquarters
February 28, 2024	Capital Improvement Committee	5:00 PM	District Headquarters

*Remote Option meeting details can be found on the Metro Parks Website www.metroparkstacoma.org

*Committee Meetings are subject to change - please check the Metro Parks Website, www.metroparkstacoma.org for the most up to date meeting schedules.





**MINUTES OF REGULAR MEETING
BOARD OF PARK COMMISSIONERS
JANUARY 22 2024**

PRESENT: Andrea Smith, President
Tim Reid, Clerk
Rosie Ayala
Aaron Pointer
Matthew Mauer

IN THE CHAIR: Andrea Smith

PLACE: MPT Headquarters, 4702 S. 19th St. Tacoma, WA

REGULAR MEETING

The regular meeting of the Metropolitan Park District Board of Park Commissioners was called to order at 6:00 p.m. Commissioner Smith read a land acknowledgement.

SPECIAL PRESENTATIONS PARKS CHAMPION AWARD

Parks Champion Award was presented to Chelsea McElroy. Hollie Rogge & Mallory Weaver spoke to the many community contributions of Ms. McElroy. A youth step dance team led by Ms. McElroy performed at the meeting.

PRESIDENTS REPORT None

STANDING COMMITTEE AND COUNCIL REPORTS

Business & Responsive Agency Advisory Council

Commissioner Reid commented that the agenda included a CAPRA update, Meadow Park remodel update, and information related to the District's audits and upcoming budget amendment.

Arts & Heritage Advisory Council

Commissioner Ayala commented that at their last meeting the council heard details about the District's accessibility plan.

Nature & Environment Advisory Council

Commissioner Ayala stated that Commissioner Mauer will now be serving as the Board liaison to this council. The committee's next meeting is January 23rd.

Joint Municipal Action Committee

Commissioner Reid noted that the committee met on January 12th. Agenda items included 2024 committee priority setting, as well as updates on community wealth building, the Maritime Skills

Center. Commissioner Ried commented that Commissioner Ayala was elected as the 2024 vice chair to the committee.

EXECUTIVE DIRECTOR’S REPORT

Executive Director, Shon Sylvia commented on the following:

- Disability Resource and Recreation Fair will be on January 27th from 1-3 pm at STAR Center
- Tet Lunar New Year, is scheduled for Sunday January 28th, 12-4:00pm Eastside Community Center
- Stafford Elementary School Yard Ribbon Cutting is scheduled for Wednesday, January 31st at 2:00pm

COMMUNITY COMMENTS None

MINUTES OF THE JANUARY 8, 2024 REGULAR BOARD MEETING

Commissioner Pointer moved to adopt the minutes as presented; seconded by Commissioner Ayala and passed on a vote of 5-0.

CONSENT AGENDA

RESOLUTION NO. C4-24: REAPPOINTING JENNIFER CRUMP TO THE NATURE & ENVIRONMENT ADVISORY COUNCIL

RESOLUTION NO. C5-24: EASTSIDE COMMUNITY CENTER CONSTRUCTION SERVICES CONTRACT FINAL ACCEPTANCE TO JOHN KORSMO CONSTRUCTION, INC.

Commissioner Pointer moved to adopt the consent agenda as presented; seconded by Commissioner Ayala and passed on a vote of 5-0.

President Smith thanked Jennifer Crump for continuing to serve as an advisory council member.

PURCHASING RESOLUTIONS

RESOLUTION NO. P6-24: AUTHORIZING PURCHASE OF GOODS AND SERVICES FOR METRO PARKS TACOMA

1. PISCES SEAFOOD FOR VARIOUS SEAFOOD (ANIMAL FOOD) IN THE AMOUNT OF \$97,956.45 (INCLUDING WSST)
2. MCROBERTS SEAFOOD FOR VARIOUS SEAFOOD (ANIMAL FOOD) IN THE AMOUNT OF \$100,464.19 (INCLUDING WSST)
3. ATLANTIC PACIFIC SEAFOOD FOR VARIOUS SEAFOOD (ANIMAL FOOD) IN THE AMOUNT OF \$154,152.98 (INCLUDING WSST)

4. CAIRNS MARINE FOR TROPICAL MARINE FISH AND INVERTEBRATES IN AN AMOUNT NOT TO EXCEED \$150,000 (INCLUDING WSST)
5. KING COUNTY DIRECTOR’S ASSOCIATION FOR CONSUMABLE SUPPLIES IN THE AMOUNT OF \$85,000 (INCLUDING WSST)
6. ASSOCIATED PETROLEUM PRODUCT INC. FOR BULK FUEL (RESALE & OPERATING) IN THE AMOUNT OF \$400,000 (INCLUDING WSST)
7. GUNARAMA WHOLESALE INC. FOR RESALE MERCHANDISE IN THE AMOUNT OF \$60,000 (INCLUDING WSST)
8. WILSON SPORTING GOODS FOR RESALE MERCHANDISE IN THE AMOUNT OF \$80,000 (INCLUDING WSST)
9. PETRO CARD FOR BULK FUEL (OPERATING) IN THE AMOUNT OF \$135,000 (INCLUDING WSST)
10. WEX FUEL FOR BULK FUEL (OPERATING) IN THE AMOUNT OF \$105,000 (INCLUDING WSST)
11. DELL MARKETING LP FOR LAPTOPS AND DESKTOP COMPUTERS IN THE AMOUNT OF \$125,000 (INCLUDING WSST)
12. AQUATIC SPECIALTY SERVICES INC. FOR REPAIR MATERIALS FOR POOLS AND SPRAY PARKS IN THE AMOUNT OF \$100,000 (INCLUDING WSST)
13. ROGER CLEVELAND GOLF CO. INC. FOR RESALE MERCHANDISE IN THE AMOUNT OF \$100,000 (INCLUDING WSST)
14. WALTER E. NELSON OF WESTERN WA FOR CUSTODIAL SUPPLIES IN THE AMOUNT OF \$85,000 (INCLUDING WSST)
15. HOME DEPOT COMMERCIAL ACCOUNT FOR REPAIR MATERIALS AND SUPPLIES IN THE AMOUNT OF \$80,000 (INCLUDING WSST)
16. WILBUR-ELLIS COMPANY FOR GROUND SUPPLIES IN THE AMOUNT OF \$80,000 (INCLUDING WSST)
17. R & D SUPPLY INC. FOR BUILDING SUPPLIES IN THE AMOUNT OF \$80,000 (INCLUDING WSST)
18. WASHINGTON CITIES INSURANCE AUTHORITY (WCIA) FOR PROPERTY, LIABILITY AND AUTO INSURANCE IN THE AMOUNT OF \$1,546,121

19. ASSOCIATION OF WASHINGTON CITIES FOR ANNUAL AWC MEMBERSHIP IN THE AMOUNT OF \$68,511.26
20. WASHINGTON STATE AUDITOR’S OFFICE INCREASE FOR 2018-2021 ACCOUNTABILITY AUDIT IN THE AMOUNT \$35,000
21. BOYS & GIRLS CLUB OF SOUTH PUGET SOUND FOR YOUTH PROGRAMMING AT EASTSIDE COMMUNITY CENTER IN THE AMOUNT OF \$350,000

Commissioner Ayala moved to adopt the resolution; seconded by Commissioner Pointer.

Mark Knowlden commented that the items in Parks and Recreation being purchased are annual purchases related to supplies, fuel and resale merchandise.

Commissioner Mauer inquired about Parks and Recreation budget for these items. Mr. Knowlden commented that these items are based on projected expenditures but there could be a need to come back to the Board if additional spending authority with vendors is needed.

Alan Varsik stated the ZEED items being purchased are annual purchases for animal food. He stated that that item 4 is for live fish for the aquarium.

Debbie Russell and Tania Wink gave details related to item 18. Ms. Wink explained the increase of 35% which is related to the WCIA pool claims experience. There was a brief discussion between staff and Board members related to insurance pool experience and options for the next renewal cycle.

Being no additional comments, the question was called, and the resolution passed on a vote of 5-0.

PUBLIC WORKS PURCHASING RESOLUTIONS None

SINGLE READING RESOLUTIONS None

SECOND READINGS RESOLUTIONS None

FIRST READING RESOLUTIONS None

NEW BUSINESS None

UNFINISHED BUSINESS None

BOARD COMMENTS

Commissioner Reid commented that he attended the Fort Nisqually volunteer dinner last weekend.

President Smith commented the Zoo’s volunteer appreciation dinner is being held this coming Saturday.

Commissioner Mauer noted that the drive way into the HQ building is dark and could be improved with additional lighting.

ADJOURN

Being no further business, the meeting was adjourned at 6:40pm.

President

Clerk

Submitted by: Jennifer Bowman, Board Secretary



METROPOLITAN PARK DISTRICT OF TACOMA

RESOLUTION NO. C7-24

APPROVAL OF WARRANTS CLAIM FUND FOR JANUARY 2024

WHEREAS, the Board of Park Commissioners approved, appropriated and adopted the 2023-2024 Biennial Budget in Resolution No. RR 105-22, dated December 12, 2022, to meet public expenses, bond retirement, interest and operational expenses for the biennium ending December 31, 2024: and

WHEREAS, the Board of Park Commissioners has authorized the Executive Director to establish procedures to meet the fiscal year public debt, to maintain accountable records of all transactions, and to provide certification that labor and debt claims have been met; now, therefore, be it.

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma that the warrants issued to meet obligations in the Warrants Claim Fund and the Disbursements by Funds in the amounts and for the period indicated on Attachment "A" have been audited and certified by the auditing officer as required by RCW.42.24.080 and those expense reimbursement claims certified as required by RCW 42.24.090, be approved for payment.

The foregoing resolution was adopted by the Board of Park Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on _____, 2024.

ATTEST:

President

Secretary

Clerk

BLANKET CERTIFICATION AND WARRANT APPROVAL FORM

AUDITOR'S CERTIFICATION

I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished, the services rendered, or the labor performed as described herein, and that the claim is a just, due and unpaid obligation against the Metropolitan Park District of Tacoma, and that I am authorized to authenticate and certify to said claim.

FOR THE PERIOD STARTING JANUARY 1, 2024 AND ENDING JANUARY 31, 2024.

WARRANTS CLAIM FUND

ACCOUNTS PAYABLE CLAIMS FUND:

Warrant Serial Numbers 342432 to 342645 AMOUNT: \$8,469,376.12

PAYROLL CLAIMS FUND:

Warrant Serial Numbers 58230 to 58334 AMOUNT: \$63,028.32

(Most employees receive payment through direct deposit advice, which are paid to the bank through the Accounts Payable Claims Fund.)

TOTAL \$8,532,404.44

Finance and Accounting Auditing Officer
Metropolitan Park District of Tacoma

- Warrant summary reports are available with the board secretary.
- Detail reports and claim vouchers are available in the Finance and Administrative Services Office.



MEMORANDUM

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

FROM: Alan Varsik, Director of Zoological & Environmental Education
Mark Knowlden, Interim Director of Parks & Recreation

SUBJECT: Purchasing Resolution

DATE: February 5, 2024

EXECUTIVE SUMMARY: The attached Purchasing Resolution seeks Board approval to enable the Executive Director to enter into the necessary agreements for the purchase and acquisition of the goods and services detailed in Exhibit A to the Resolution and in the supporting information below.

Proposed goods and services proposed for purchase and/or acquisition:

<u>Item Number</u>	<u>Proposed Vendor</u>	<u>Proposed Purchase</u>	<u>Price</u>
1.	Lamar Advertising	Billboard Advertising	\$136,000
2.	Seattle Finest Security & Traffic Control	Security Services	\$535,000

ITEM NO. 1

- **VENDOR** Lamar Advertising
- **GOODS OR SERVICE** Billboard Advertising
- **PRICE** \$136,000 (ZEED) for 2024
- **SOURCE OF FUNDING** ZEED Marketing Budget
- **CONTACT** Alan Varsik, 253-404-3634

BACKGROUND: District staff negotiate billboard advertising in-house to secure the best rates and placements for the Point Defiance Zoo & Aquarium and Northwest Trek advertising

campaigns. Lamar has the largest inventory of billboards in the South Sound area. District staff are negotiating smaller contracts with Outfront Media, Pacific Outdoor and Sun Outdoor.

FISCAL IMPACT: These expenses are included in the ZEED department operating budgets.

ADDITIONAL INFORMATION: For additional information, contact Alan Varsik, Director of Zoological & Environmental Education Department at alan.varsik@pdza.org or 253-404-3634

ITEM No. 2

- **VENDOR** Seattle Finest Security & Traffic Control
- **GOODS OR SERVICE** Security Services
- **PRICE** Total \$535,000
Parks & Recreation - \$415,000.00
ZEED - \$120,000
- **SOURCE OF FUNDING** 2024 Departmental Operating Budgets
- **CONTACT** Alan Varsik, 253-404-3634
Mark Knowlden, 253-255-2487

BACKGROUND: A request for bids was advertised on 10/16/20 and 10/23/20 and we received four proposals. A panel comprised of staff from Parks & Recreation and ZEED independently reviewed the proposals and ranked all four that were received. The original proposal contained two scopes of service, Scope A for PDZA and Scope B for the Parks & Recreation Department. On November 24, 2020, two companies were interviewed: Seattle’s Finest and Allied Universal Security. Seattle’s Finest was ranked as number one by reviewers based on their experience in similar facilities of size and type, pricing, electronic monitoring technology, and the resumes of their key employees.

Since February of 2021 there have been two contract extensions and multiple change orders. The 2021-22 biennial amount for security was **\$1,014,486** and with this requested change order for \$535,000, it will bring the 2023-24 biennial amount to **\$1,225,000**. The contract total for both biennia will equal **\$2,239,486** and this contract and scope of work will expire December 2024.

Following breakdown is the purchasing actions taken by staff and the board:

Date	Resolution	Amount	Balance	Notes
2/1/2021	P2-21		\$ 274,486.00	approved by the Board
2/22/2021	P15-21	\$ 500,000.00	\$ 774,486.00	add additional services for P&R and funds
1/21/2022		\$ 40,000.00	\$ 814,486.00	additional funds for P&R
9/13/2022	P72-22	\$ 200,000.00	\$ 1,014,486.00	additional funds for P&R
3/31/2023	P33-23	\$ 655,000.00	\$ 1,669,486.00	additional funds for ZEED & P&R
12/1/2023		\$ 35,000.00	\$ 1,704,486.00	additional funds for ZEED
2/12/2024	P8-24	\$ 535,000.00	\$ 2,239,486.00	additional funds for ZEED & P&R

Again, Seattle's Finest is currently assisting the Parks and Recreation Department with various tasks throughout the park system (examples include closing and locking gates and restrooms, outreach and assistance to individuals experiencing homelessness, etc.) acting as rental monitors at our community centers and rental venues and providing security services during major events and festivals. In addition, these guards are utilized for specialty emphasis patrols on an as needed basis to aid and outreach in locations throughout the park system where necessary. Seattle Finest also provides nighttime security in and around PDZA.

FISCAL IMPACT: These expenses are included in the Parks & Recreation and ZEED department operating budgets.

ADDITIONAL INFORMATION: For additional information, contact Alan Varsik, Director of Zoological & Environmental Education Department at alan.varsik@pdza.org or 253-404-3634 or Mark Knowlden, Interim Director of Parks & Recreation at mark.knowlden@tacomaparks.com or 253- 255-2487.

METROPOLITAN PARK DISTRICT OF TACOMA

PURCHASING RESOLUTION NO. P8-24

**AUTHORIZING PURCHASE OF
GOODS AND SERVICES FOR METRO PARKS TACOMA**

WHEREAS, the Board of Park Commissioners have established policies governing the purchase of goods and services for Metro Parks Tacoma through the adoption of Resolution No. RR22-15, Authorizing Amendment of the Purchasing Policy for the Metropolitan Park District of Tacoma; and

WHEREAS, the Board of Park Commissioners through the adoption of Resolution No. R51-02, Adopting Board Policies and Procedures, authorized the use of a Purchasing Resolution for consolidation of all purchases seeking approval by the Board of Park Commissioners; and

WHEREAS, Metro Parks staff recommends the Board of Park Commissioners authorize the purchase of goods and services detailed below; now, therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma to authorize the Executive Director to enter into the necessary agreements to purchase or acquire the following goods and services as detailed in Exhibit A to this resolution.

The foregoing resolution was adopted by the Board of Park Commissioners of the Metropolitan Park District of Tacoma at a meeting held on _____, 2024.

ATTEST:

President

Secretary

Clerk

Exhibit A
Purchasing Resolution No. P8-24

ITEM NO. 1

- **VENDOR** Lamar Advertising
- **GOODS OR SERVICE** Billboard Advertising
- **PRICE** \$136,000 (ZEED) for 2024
- **SOURCE OF FUNDING** ZEED Marketing Budget
- **CONTACT** Alan Varsik, (253) 404-3634

ITEM NO. 2

- **VENDOR** Seattle Finest Security & Traffic Control
- **GOODS OR SERVICE** Security Services
- **PRICE** Total \$535,000
Parks & Recreation - \$415,000.00
ZEED - \$120,000
- **SOURCE OF FUNDING** 2024 Departmental Operating Budgets
- **CONTACT** Alan Varsik, (253) 404-3634
Mark Knowlden, (253) 255-2487





MEMORANDUM

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

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

SUBJECT: **Contract Acceptance for Archeological Services Master Agreement to Environmental Science Associates, Inc. (ESA)**

DATE: February 5, 2024

EXECUTIVE SUMMARY: This resolution authorizes a professional services master agreement contract award to Environmental Science Associates, Inc. (ESA) for Archeological Services for multiple capital projects funded by the 2014 UTGO Park Bond Program. Total contract expenditures after this amendment are not to exceed \$300,000.00.

BACKGROUND: As part of the development process for many of our capital projects, it is necessary to have professional archaeological investigations conducted to assist in the design process and to ensure compliance with City, State and Federal regulations and permitting requirements. To more efficiently provide this information, and because this service is generally standard in nature, this professional service agreement will cover the CIP projects anticipated through 2026.

A formal RFP was advertised on September 7, 2023 and due on October 11, 2023. Three (3) firms responded; a staff panel reviewed the proposals and all three (3) firms were invited for interviews. Environmental Science Associates, Inc. (ESA), was selected to provide the archeological services through the end of 2026.

ESA is headquartered in Seattle and does have offices in several states. The team that serves MPT is located in Seattle. Even though ESA is not a MWBE firm, they strive to include small, minority, and disadvantaged business as subconsultants where possible.

The scope of professional services generally consists of the following, but not limited to:

Professional Archaeological Services to assist Metro Parks in compliance with Section 106 of the NHPA, Executive Order 05-05, and SEPA. Metro Parks receives funding from both federal and state agencies and must also obtain federal, state, and local government permits depending upon the nature of the project. More specifically the consultant would provide the following scope of services:

- Provide professional archaeological services that meet Federal Secretary of Interior Standards and Washington State RCW 27.53 and 27.44 requirements.

- Provide professional archaeological survey, identification, documentation, and site form completion into WISAARD.
- Providing project-monitoring services for all levels of sensitivity as needed.
- Active observation on site during construction.
- Develop reporting as needed to satisfy requirements of Department of Archaeology and Historic Preservation (DAHP), National Park Service (NPS), City of Tacoma and others as necessary.

FISCAL IMPACT: A Work Order system is used to define a scope of services for each project site and project funds are paid from each of the corresponding park capital budgets as identified in the 2014 UTGO Capital Improvement Bond. The contract amount is not to exceed \$300,000.00.

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

METROPOLITAN PARK DISTRICT OF TACOMA

RESOLUTION NO. PW9-24

CONTRACT ACCEPTANCE FOR ARCHEOLOGICAL SERVICES MASTER AGREEMENT TO ENVIRONMENTAL SCIENCE ASSOCIATES, INC. (ESA)

WHEREAS, the Board of Park Commissioners of the Metropolitan Park District of Tacoma desires to move forward with implementation of the 2014 UTGO Bond Projects; and

WHEREAS, Metro Parks requires Archeological services for many of the 2014 UTGO Bond projects and;

WHEREAS, Environmental Science Associates, Inc (ESA) was selected from a review of Three (3) Proposals obtained from consultants in response to Metro Parks' public solicitation with all three (3) being interviewed; and

WHEREAS, funds for the services will be provided from the Metro Parks Tacoma 2014 UTGO Capital Improvement Bond funds on an individual project basis through directed work orders under this contract; Now, therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma to grant the contract award for Archeological Services to Environmental Science Associates, Inc. (ESA) in the amount of not to exceed \$300,000.00

The foregoing resolution was adopted by the Board of Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on _____, 2024.

ATTEST:

President

Secretary

Clerk





MEMORANDUM

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

FROM: Debbie Russell, Director, Business Administration and Planning

SUBJECT: Approving the Purchase and Sale Agreement for the Probst Property, Accepting & Appropriating a Pierce County Conservation Futures Grant and providing for the reimbursement of the acquisition costs from the 2014 Bond Issue.

DATE: February 5, 2024

EXECUTIVE SUMMARY: Staff requests that the Board of Park Commissioners approve the Purchase and Sale Agreement for the Probst Property, Accept & appropriate a Pierce County Conservation Futures Grant for \$850,000, and authorize Metro Parks to expend funds for the acquisition of the property to be reimbursed through the issuance of bonds pursuant to the 2014 voter approved bond issue. The land is currently owned by Clifford Probst and consists of two parcels constituting approximately 8.62 acres adjacent to Swan Creek Park with an appraised value of \$2,475,000.

BACKGROUND:

Probst Property

Acquisition of this property is consistent with the 2011 Swan Creek Park Master Plan (Attachment A.) The Master plan reflects the community's vision of Swan Creek and is intended to provide direction for site improvements, enhancements, development, management, and conservation. The Plan, included as Attachment A to this memo, recommends that Metro Parks seek to acquire key parcels on a willing-seller basis and the Probst Property is labeled a "long-term acquisition" in the Plan.

The northernmost of the two parcels, tax parcel number 0320233104, at 4.0 acres, is wholly undeveloped with several species of mature trees including Douglas fir, maple, and likely some alder. The southernmost parcel, tax parcel number 0320233103, at approximately 4.62 acres, also has significant mature tree coverage. It is partially developed with a one-story, single-family house and supporting buildings including a detached garage, barn, chicken coop, and two sheds. MPT expects to remove those structures prior to activation for public access.

The eastern boundaries of both parcels abut the steep slopes of Swan Creek which is a salmon-bearing stream. The parcels are near the south end of Swan Creek Park, adjacent to Roosevelt Avenue and are depicted below.



The Probst family contacted MPT staff in July 2022 inquiring if MPT would like to purchase the property, whereupon staff initiated a more formal property evaluation and negotiation for purchase. A September 26, 2022 appraisal calculated the “as is” market value of the property at \$2,475,000 based upon its development potential.

Acquisition Funding Strategy

The purchase price for the Probst Property is \$2,475,000 which amount was determined by an appraisal. The total estimated costs associated with this acquisition are as follows:

Purchase Price	\$2,475,000
Appraisal and Review Appraisal	\$15,000
Closing Costs	\$11,875
Administrative Fees	\$42,500
Due Diligence including surveys	\$49,500
Demolition (Estimated)	\$250,000
Additional Costs	\$22,517
TOTAL BUDGET	\$2,866,392

The total acquisition cost will be funded by a combination of 14UTGO Bond funds and a Pierce County Conservation Futures grant. An RCO-WWRP-Habitat Conservation Grant (application to be submitted by May 1st) and a cash donation from the seller to MPT may further offset the cost of acquisition, though these revenue sources have yet to be confirmed.

The Pierce County Conservation Futures program preserves open space, wetlands, wildlife habitat, timber land and agricultural lands to benefit Pierce County residents. MPT has been awarded \$850,000 under this program for the Probst property acquisition.

The Washington Wildlife and Recreation Program (WWRP), administered through the Washington State Recreation and Conservation Office (RCO), provides funding for a broad range of land conservation efforts including conservation of natural areas near and in big cities. The program will grant eligible projects up to 50% of the cost. MPT will apply for this in May and has received a Waiver of Retroactivity from RCO that allows MPT to submit an application and apply funds awarded retroactively to the costs of this property acquisition. MPT expects a decision regarding this grant by November 2024, and if awarded, the funds will be available in July 2025.

Also, the property owner, Mr. Probst, has agreed to a donation of five percent of the purchase price. The acceptance and appropriation of these funds would be via formal Board action at a future date after closing of property sale.

The remaining funding needed will be from the 14UTGO Bond funds.

Funding this acquisition is as follows:

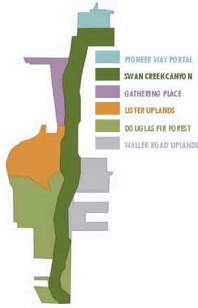
Pierce County Conservation Futures	\$ 850,000
<u>14UTGO Bond Funds</u>	<u>\$ 2,016,392</u>
TOTAL ACQUISITION COST	\$ 2,866,392

FISCAL IMPACT: The purchase price will be funded from 14UTGO Bond Funds and Pierce County Conservations Futures.

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

Attachment 'A'

2011 Swan Creek Master Plan



GATHERING PLACE

ENTRY: pedestrian/bicycle entries at 38th Street and 42nd Street, signage.

COMMUNITY GARDEN: expanded, fenced garden area, fruit orchard and berry shrubs, native plant propagation for park vegetation restoration projects, permaculture, connection to Sallahian community.

PROMENADE: paved, multi-use promenade beginning at 38th Street and extending to the Lister Uplands, benches, bike racks, interpretive signage.

GATHERING PLACE: renovated structure for gardening classes and environmental education, additional small picnic shelter, tool shed.

LISTER UPLANDS

ENTRY: gated entry near Lister Elementary School with paved parking (50 spaces), access along perimeter road to separate gated area (event parking described below).

FLEXIBLE USE BUILDING: multipurpose building with indoor classroom, gathering and picnic space, restrooms and shower facilities for campers.

DOG PARK: fenced areas for large and small dogs, benches and trash collection, located near parking.

URBAN CAMPING: reservable tent camping, cleared seating area, picnic tables, fire rings, kiosk with power and running water, comfort station with composting toilet.

ROPES CHALLENGE COURSE: low ropes elements for individuals and groups to build agility, strength and balance and explore group interaction, problem-solving and leadership challenges.

STREET NETWORK: grid retained for ADA accessible pathways for walking, biking, fun run and other community activities, connection to promenade.

PARK OFFICE & CARETAKER RESIDENCE: building with up-front visitor space to provide information and house site manager, provides security presence within park.

PERMACULTURE AREA: initial demonstration plot near flexible-use building, productive trees and shrubs eventually interspersed throughout the zone.

SPECIAL EVENT AREA + POLICE TRAINING: fenced, gated, permeable asphalt parking area, suitable for event parking/staging and driver training, pointed parking stalls, bike parking, coordinated event and training scheduling for use.

PICNIC AREA: group picnic shelter, barbecues, trash receptacles, open turf play area, seasonal restroom.



PIONEER WAY PORTAL

ENTRY: improved gravel parking lot (30 vehicles) with bus turnaround and loading/unloading zone, trail head, bike parking, signage.

SHELTER: small rustic shelter for picnic and programs, composting toilet.

ADA LOOP TRAIL/OVERLOOK: accessible path around sediment pond extending to footbridge, overlook for salmon viewing and education, interpretive signage.

SWAN CREEK CANYON

CREEK: improved salmon habitat, sediment source evaluation and management, enhanced native riparian plantings, removal of dam remnants, footbridge replacement with longer bridge span, engineered log jams.

TRAIL: enhancements to existing trail, trail stabilization and erosion control, selective relocations further from creek.

VEGETATED BUFFER: managed native vegetation zone along top of canyon to protect watershed.

WALLER ROAD UPLANDS

BMX TRAILS: potential race course or technical bicycle trails with separate entrance and parking (10a).

VEGETATED BUFFER: managed native vegetation zone along top of canyon to protect watershed.

FOREST MANAGEMENT: sustainable forest management, invasive monitoring and removal, fire hazard mitigation.

DOUGLAS FIR FOREST

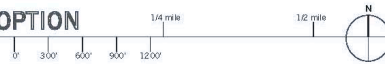
ENTRY: pedestrian/bicycle entries at 56th and 64th Streets, signage.

MOUNTAIN BIKE TRAILS: 4 to 5 miles of mountain bike cross-country trails to appeal to a variety of ages and skill levels, trails developed and operated by a mountain biking organization in consultation with a forester, no bike use in creek canyon.

TRAILS: Bicycle and walking trails through forest, separate from mountain bike trails.

FOREST MANAGEMENT: sustainable forest management, invasive monitoring and removal, fire hazard mitigation.

SWAN CREEK MASTER PLAN - PREFERRED OPTION



METROPOLITAN PARK DISTRICT OF TACOMA

RESOLUTION NO. R10-24

**APPROVING THE PURCHASE AND SALE AGREEMENT FOR THE PROBST
PROPERTY, ACCEPTING & APPROPRIATING A PIERCE COUNTY
CONSERVATION FUTURES GRANT, AND PROVIDING FOR THE
REIMBURSEMENT OF CERTAIN ACQUISITION COSTS
FROM THE 2014 BOND ISSUE**

WHEREAS, the Metropolitan Park District of Tacoma (Metro Parks) is the owner of Swan Creek Park, which is a 373-acre greenspace with a salmon-bearing stream, wooded canyon, upland forest, paved and natural trails, a community garden, and mountain bike trails;

WHEREAS, in 2011, Metro Parks developed the Swan Creek Park Master Plan which is intended to provide direction for site improvements, enhancements, development, management and conservation of the Park. The Plan recommends that Metro Parks seek to acquire key parcels adjacent to the Park on a willing-seller basis to improve and protect the Park;

WHEREAS, the owner of two parcels totaling 8.6 acres that adjoin Swan Creek Park and are considered a “long-term acquisition” under the Plan (the “Probst Property”) has agreed to sell the property to Metro Parks for \$2,475,000.00 pursuant to a Purchase and Sale Agreement, which is attached to this resolution as Exhibit “A”;

WHEREAS, the Purchase and Sale Agreement is subject to Metro Parks’ Board approving the Agreement, Metro Parks conducting its inspection and due diligence of the property to determine if it is suitable for Metro Parks’ intended use and that the cost of the acquisition will be within Metro Parks’ capital budget; and

WHEREAS, Metro Parks applied for and was awarded a conservation futures grant which will fund \$850,000 of the purchase price and the remaining portion and related expenses will be funded from 14UTGO Bond funds; and

WHEREAS, the acquisition of this property is for the purpose of providing infill of an existing park area and Metro Parks anticipates issuing additional tax-exempt bonds pursuant to the April 22, 2014 approval of its bond measure by the qualified electors of Metro Parks at a special election held thereon; and

WHEREAS, Metro Parks must complete this property acquisition by February 29, 2024;
and

WHEREAS, the acquisition of the Probst Property will serve to further the goals of Metro Parks to provide park and recreation opportunities to the public and to preserve, improve and enhance natural areas and is consistent with the 2014 Bond Program; Now, therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma as follows:

Section 1. The Purchase and Sale Agreement for the Probst Property is approved.

Section 2. Accept & Appropriate \$ 850,000 from Pierce County Conservation Futures Grant and authorize the Executive Director to execute a contract with Pierce County.

Section 3. The maximum principal dollar amount expected to be used to acquire the Probst Property and for related expenses is \$ 2,016,392.

The foregoing resolution was adopted by the Board of Park Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on _____, 2024.

ATTEST:

President

Secretary

Clerk

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is dated January 24, 2022 (for reference purposes only) and entered into by and between CLIFFORD PROBST, an individual, ("Seller"), and the METROPOLITAN PARK DISTRICT OF TACOMA, a Washington municipal ("Buyer"). Buyer and Seller are hereafter referred to individually as "Party" and collectively as the "Parties".

RECITALS

A. Seller owns certain real property and improvements consisting of two tax parcels commonly known as 6009 East Roosevelt Avenue, Tacoma, Pierce County, Washington, legally described on Exhibit A and depicted on Exhibit B attached.

B. Buyer desires to purchase the Property, as hereinafter defined, because of its value as an addition to the adjoining Swan Creek Park, and to supplement its existing park and recreation opportunities for the benefit of the community.

C. Seller desires to sell the Property (as defined below) to Buyer, and Buyer desires to purchase the Property from Seller, on the terms and conditions set forth in this Agreement.

Intending to be legally bound, for good and valuable consideration, including the mutual covenants and promises of the Parties, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. PROPERTY. The "Property" subject to this Agreement consists of all of the following:

a. That certain real property consisting of 8.62 acres, more or less, and improvements located in Pierce County, Washington and legally described on the attached Exhibit A and depicted on Exhibit B (the "Land").

b. All rights, privileges and easements appurtenant to the Land, including without limitation: all minerals, oil, gas and other hydrocarbon substances on or under the Land; all development rights, air rights, and water rights relating to the Land; any and all easements, rights-of-way, rights of ingress or egress or other interest in, on, or to, any land, highway, street, road, or avenue, open or proposed, in, on, or across, in front of, abutting or adjoining the Land; all rights to utilities serving the Land; and all other appurtenances used in connection with the beneficial use and enjoyment of the Land.

c. All buildings upon and other improvements appurtenant to the Land.

d. All of Seller's rights, titles and interests in and to the originals and all copies of all documents, other writings, computer files and any other materials owned or developed by or on behalf of Seller with respect to the Land including, without limitation, all plans, specifications, permit files, and any items made or contemplated by or on behalf of Seller with respect to or relating to the development of the Land.

e. All of Seller's rights, titles and interests in and to any intangible property utilized in connection with the ownership and/or operation of the Land including, without limitation, all drawings, plans, specifications and other architectural or engineering work product; all government permits, certificates, licenses, authorizations and approvals; all rights, claims, causes of action, and warranties under contracts with contractors, engineers, architects, consultants or other parties; all utility, security and other deposits and reserve accounts made as security for the fulfillment of any of Seller's obligations; and guaranties, warranties or other assurances of performance.

2. **PURCHASE.** Seller shall sell and convey the Property to Buyer, and Buyer shall purchase the Property from Seller, on the terms, covenants and conditions set forth in this Agreement. Buyer acknowledges that prior to Closing (as defined below), Buyer shall have inspected the Property. Buyer will be purchasing the Property in its present physical condition, "As Is," except for the express covenants, representations and warranties and indemnities contained in this Agreement. As of the Effective Date, Buyer agrees that Seller has made no representations or warranties or agreements of any kind or nature regarding the Property, except for the express warranties contained in this Agreement.

3. **PURCHASE PRICE.**

3.1. **Amount.** The purchase price ("Purchase Price") for the Property shall be Two Million, Four Hundred and Seventy-Five Thousand and 0/100 Dollars (**\$2,475,000.00**).

3.2. **Payment.** Buyer shall pay Seller the Purchase Price at Closing in immediately available funds.

3.3. **Earnest Money.** Within five (5) Business Days after the Effective Date, Buyer will execute a promissory note in favor of Seller (the "Earnest Money Note") in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) and in the form attached hereto as **Exhibit C**, and deposit the Earnest Money Note in escrow with AEGIS LAND TITLE GROUP located at 3906A South 74th Street, Suite 204, Tacoma, WA 98409 (the "Escrow Holder" or "Title Company"), with the Earnest Money Note to be held by the Escrow Holder as earnest money. Funds in payment of the Earnest Money Note are due within five (5) Business Days after delivery of Buyer's Due Diligence Satisfaction Notice (as hereafter defined). The funds in payment of the Earnest Money Note together with

any other amounts that are specified in this Agreement as being added to the Deposit (collectively, the "Deposit") shall be held by Escrow Holder and applied to the Purchase Price at Closing. Concurrently with the payment of the funds in payment of the Earnest Money Note to the Escrow Holder, the Earnest Money Note shall be returned to Buyer by Escrow Holder marked "Paid in Full." Except as otherwise expressly provided in this Agreement, the Earnest Money Note or Deposit, as applicable, shall be returned to Buyer unless all of Buyer's Conditions Precedent (as defined below) are satisfied or removed. IN THE EVENT BUYER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE PROPERTY, THE DEPOSIT SHALL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES AND AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER. Buyer and Seller agree that the liquidated damages represent a reasonable sum considering all of the circumstances existing on the date of this Agreement and represent a reasonable estimate of the losses that Seller will incur if Buyer fails to purchase the Property after all Buyer's Conditions Precedent have been completely satisfied in Buyer's sole and absolute discretion.

4. TITLE.

4.1. Condition of Title. Title shall be insurable by an ALTA Owner's Standard Coverage Policy in the amount of the Purchase Price (the "Title Policy"), subject only to the Permitted Exceptions (as defined below). Seller shall satisfy all requirements of the Title Company in connection with issuance of the Title Policy in accordance with the Commitment (as that term is defined below).

4.2. Title Insurance Commitment. Buyer has obtained a preliminary commitment for title insurance (Commitment No. 1188227 dated August 3, 2022) from Aegis Land Title Group showing title to the Property as vested in Seller and committing to insure such title in Buyer by the issuance of the Title Policy, a copy of which is attached hereto as **Exhibit D**. The commitment (or one or more updates thereto) (collectively, the "Commitment") shall also commit the Title Company to issue such policy endorsements as reasonably required by Buyer. If Buyer will require an extended coverage policy, Buyer shall promptly arrange for a survey of the Land to be performed and delivered to the Title Company for inclusion in an update to the Commitment (the "Survey").

4.3. Review of Title. Buyer has reviewed the Commitment and Special Exceptions 3, 4, 5, 6, 7, 8, 9, 10 and 11 shall be removed by Seller at Closing and Seller agrees to have those Special Exceptions removed at Closing. If Buyer conducts a survey and an updated Commitment is issued, or if for any other reason an updated Commitment is issued, Buyer shall notify Seller in writing (a "Title Objection Notice") of any objection Buyer in its sole discretion may have to any matter of record shown on the updated Commitment or disclosed by the Survey (the "Title Objections"). Special Exceptions 1 and 2 of the Commitment and those matters of record disclosed in any updated Commitment or Survey that Buyer does not disapprove constitute permitted exceptions ("Permitted Exceptions"). Seller shall have five (5) Business Days from its receipt of a Title Objection Notice to notify Buyer in writing whether Seller commits to cause the Title Objections to be removed or insured against at Closing. If Seller does not commit to

remove or provide insurance against any Title Objection, Buyer's sole remedy shall be to either:

a. proceed with this transaction and, subject to any other conditions or requirements provided for in this Agreement, purchase the Property, and any Title Objections that Seller has not committed to remove or insure over shall be considered Permitted Exceptions; or

b. elect not to proceed to purchase the Property and terminate this Agreement, by giving Seller written notice of such election within ten (10) Business Days after receiving Seller's response to the Title Objection Notice, in which case this Agreement shall terminate, the Earnest Money Note or the Deposit, as applicable, shall be returned to Buyer and neither Seller nor Buyer shall have any further rights or obligations under this Agreement, except such obligations of the Parties that expressly survive the termination of this Agreement.

If Buyer fails to give notice of its election under the immediately preceding sentence within ten (10) Business Days of having received Seller's notice as above provided, Buyer shall be deemed to have elected to terminate this Agreement.

4.4. Intervening Exceptions. Seller shall immediately notify Buyer of any liens, leases, encumbrances, easements, restrictions, conditions, covenants, rights-of-way and other matters affecting title to the Property that are created and which may appear of record or be revealed by survey or otherwise after the date of the Commitment but before the Closing (collectively, "Intervening Exceptions"). Intervening Exceptions shall be subject to Buyer's approval and Buyer shall have five (5) Business Days after notice in writing of any Intervening Exception, together with a description thereof and a copy of the instrument creating or evidencing the Intervening Exception, if any, to either accept it (whereupon the Intervening Exception shall become a Permitted Exception) or submit written objection. Seller will promptly remove all Intervening Exceptions that do not become Permitted Exceptions.

4.5. Non-Permitted Exceptions. Notwithstanding any provision of Section 4.3 or 4.4 to the contrary, the following are not considered Permitted Exceptions and must be removed by Seller at or prior to Closing: (i) liens and security interests securing loans obtained by Seller; (ii) any other monetary liens or security interests; and (iii) all taxes and assessments due and payable for or applicable to any period prior to the Closing.

5. BUYER'S CONDITIONS PRECEDENT.

5.1. Conditions to Purchase. Buyer's obligations with respect to the purchase of the Property and the Closing are subject to fulfillment of the conditions precedent ("Buyer's Conditions Precedent") described below, or waiver thereof by Buyer, not later than the Closing Date:

a. Title Policy. All requirements set forth in the Commitment (including any update) shall have been satisfied or waived and the Title Company shall be prepared to issue the Title Policy.

b. Moratorium. No reassessment, reclassification, rezoning or other change in judicial or administrative decision or proceedings (including amendments and modifications of any of the foregoing) pending or proposed to be imposed by any governmental or quasi-governmental authority or any public or private utility having jurisdiction over the Property shall have occurred.

c. Zoning; Survey. There are no existing violations of zoning ordinances or other laws, ordinances or restrictions applicable to the Property; there are no encroachments upon the Property; and there are no other matters of survey that, in Buyer's sole discretion after examination of a survey of the Property, would affect Buyer's intended uses and purposes.

d. No Notices. Seller has not received actual notice from any governmental authority that existing uses of the Property are not in full compliance with all applicable zoning laws (and applicable variances) or any other local, municipal, regional, state or federal requirements, or that the improvements on the Property do not comply with all applicable building, safety, health, zoning, environmental, subdivision and other laws, ordinances and regulations.

e. No Actions or Proceedings. There is no action, proceeding or investigation whether in the nature of eminent domain or otherwise, pending or threatened, with respect to the title, ownership, maintenance, use or operation of the Property.

f. No Environmental Violations. The Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under, above or about the Property, including but not limited to soil and groundwater conditions.

g. Representations, Warranties and Covenants of Seller. Seller shall have performed each and every obligation to be performed by Seller under this Agreement, and Seller's representations and warranties in this Agreement shall be true and correct as of the Closing.

h. No Adverse Changes. There shall have been no adverse change in the physical condition of the Property since the Effective Date.

i. No Seller Bankruptcy. There shall not have been filed against or by Seller a petition in bankruptcy or insolvency or a petition seeking to affect any plan or other arrangement with creditors or seeking the appointment of a receiver unless it shall have been discharged or dismissed before Closing. No receiver or liquidator has been appointed for all or substantially all of Seller's

property. Seller shall not have made an assignment for the benefit of creditors or taken or had taken against it any other similar action for the benefit or protection of creditors.

5.2. Benefit of Buyer. The Buyer's Conditions Precedent are solely for the benefit of Buyer and may be waived only in writing by Buyer. Buyer shall at all times have the right to waive any condition. The waiver by Buyer of any condition in any specific circumstances shall not be a waiver of such condition with respect to any other circumstances or a waiver of any other condition and shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller, unless the waiver expressly so provides.

5.3. Termination. If any of Buyer's Conditions Precedent is not timely fulfilled and is not waived by Buyer, Buyer may terminate this Agreement by written notice to Seller and Escrow Holder in which event the Earnest Money Note or Deposit shall be returned to Buyer, any other items delivered to the Escrow Holder shall be returned to the Party who delivered it, and neither Party shall have any further rights or obligations under this Agreement other than those obligations which are expressly provided as surviving the termination of this Agreement.

6. INVESTIGATION OF THE PROPERTY; PARK BOARD APPROVAL; FUNDING.

6.1. Seller's Initial Deliveries. Within five (5) Business Days from the Effective Date, Seller shall, at its sole expense, deliver to Buyer all documents in Seller's possession or control relating to the ownership, operation, renovation or development of the Property including, without limitation: real estate taxes, assessments and utilities for the last three years and year to date; franchise agreements, property management agreements and any other agreements with professionals or consultants; leases or other agreements relating to occupancy and records of amounts received thereunder; plans, specifications, permits, applications, drawings, surveys and studies (including, for example, environmental studies); maintenance records, accounting records and audit reports for the last three years and year to date; maintenance or service contracts; installment purchase contracts; leases of personal property; and the disclosure form required to be delivered by sellers of real property in accordance with RCW Ch. 64.06 ("Seller's Disclosure Documentation").

6.2. Entry. Without limiting any other rights of Buyer under this Agreement, as of the Effective Date, Buyer and Buyer's agents, contractors and employees, subject to the rights of and after legal notice to tenants and at Buyer's sole expense, shall have the right to enter the Property at reasonable times to conduct structural and other inspections and testing including, without limitation, pest, soils, ground water, engineering, environmental and similar tests and assessments. Seller agrees to cooperate with any such investigations, inspections, or studies made by or at Buyer's direction. Seller further agrees to provide such reasonable assistance as requested by Buyer in support of any applications that Buyer may make to any governmental agency relating to grant funding, permitting or land use. The exercise by

Buyer of any of the preceding rights or any other act of Buyer shall not negate any representation, warranty or covenant of Seller, or modify any of Buyer's rights or Seller's obligations in the event of any breach by Seller of any of its representations, warranties or covenants under this Agreement. Buyer shall indemnify and hold Seller harmless from any and all damages, expense, liens or claims (including attorneys' fees) arising from Buyer's negligence in the exercise of its rights under this Section 6.2 or failure to pay third parties, and the provisions of this indemnity shall survive termination of this Agreement.

6.3 Park Board Approval. Buyer's Board of Park Commissioners must approve this Agreement and provide its authorization to consummate the purchase and sale contemplated by this Agreement.

6.4 Financing. Buyer shall have secured financing for the Property in an amount sufficient to pay the Purchase Price in full on Closing and otherwise on terms and conditions acceptable to Buyer in Buyer's sole and absolute discretion.

6.5. Period for Investigation. Buyer's obligation to proceed to Closing is conditioned on Buyer's satisfaction with the Property, the suitability of the Property for Buyer's intended uses and the feasibility of this transaction in Buyer's sole and absolute discretion. Buyer shall have until **February 14, 2024** to conduct its investigation (the "Due Diligence Period"), obtain Park Board approval and financing. If Buyer fails to notify Seller and the Escrow Holder in writing that this condition is satisfied or waived (the "Due Diligence Satisfaction Notice") prior to 5:00 p.m. Pacific Time on **February 14, 2024**, then this Agreement shall be deemed terminated in which event the Earnest Money Note or Deposit shall be returned to Buyer any other items delivered to the Escrow Holder shall be returned to the Party who delivered it, and neither Party shall have any further rights or obligations under this Agreement other than those obligations which are expressly provided as surviving the termination of this Agreement.

7. SELLER'S OBLIGATIONS. Before the Closing Seller shall, at its sole expense:

7.1. Promptly notify Buyer upon learning of any fact or event that would make any of the representations or warranties of Seller contained in this Agreement (including, without limitation, Buyer's Conditions Precedent and the representations and warranties set forth in Section 12 hereof) unsatisfied, untrue or misleading in any material respect or that would cause Seller to be in violation of any of its covenants or other obligations hereunder.

7.2. Notify Buyer promptly upon receiving notice of a claim or pending litigation affecting the Property, or notice of any event, transaction, or occurrence before Closing that would materially and adversely affect the Property or any part thereof.

7.3. With respect to the Property or any interest therein or part thereof, not take any action that will adversely affect title including, without limitation, convey, mortgage, grant a deed of trust, abandon, relinquish, cloud or encumber title, or contract to do any of the foregoing or consent to any of the foregoing.

7.4. Maintain the Property in good order, condition and repair, and otherwise operate the Property and maintain its business records in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property. Notwithstanding the foregoing but subject to Section 7.5, without the prior consent of Buyer which shall not be unreasonably withheld, Seller shall not enter into or modify existing rental agreements or leases, service contracts or other agreements relating to the operation or ownership of the Property.

7.5. Maintain and, if necessary, renew, all casualty, liability and hazard insurance policies currently in force with respect to the Property through the Closing without diminution in coverage.

7.6. Remedy any violations of law or municipal ordinances or regulations of any federal, state, local or other government having jurisdiction over the Property.

7.7 Cause all mechanics', laborer's, materialmen's or similar liens to be discharged and pay for all labor, material or services that have been furnished in, on or about the Property that could result in any such lien to be filed, asserted or enforced subsequent to Closing.

8. DELIVERIES TO ESCROW HOLDER.

8.1. By Seller. Seller shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under this Agreement:

a. Deed and Other Conveyance Documents. A statutory warranty deed, in form and substance satisfactory to Buyer and its counsel and the Title Company, duly executed and acknowledged by Seller (the "Deed"), together with an assignment or other appropriate instrument(s) conveying personal property, in form and substance satisfactory to Buyer and its counsel and duly executed by Seller, conveying to Buyer or its designee indefeasible good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, restrictions and easements, except only the Permitted Exceptions.

b. FIRPTA Affidavit. A certificate in form and substance acceptable to Buyer and its counsel, duly executed by Seller, evidencing that Seller is exempt from the withholding requirements of Section 1445 of the Code. If Seller is a foreign person, and this transaction is not exempt under the Foreign Investment in Real Property Tax Act, Escrow Holder is instructed to withhold at Closing the required amount from amounts otherwise due Seller and pay that amount to the Internal Revenue Service.

c. ALTA Affidavits. Any affidavits, certifications or instruments, including any lien affidavits or mechanic's lien indemnifications, duly executed and

acknowledged by Seller, as reasonably may be required by the Title Company in order to issue the Title Policy.

d. Closing Certificates. A certificate of Seller dated as of the Closing Date certifying that all of Seller's representations and warranties remain true as of the Closing Date and that Seller has performed all of its obligations under this Agreement to be performed on or prior to the Closing Date, or if not, specifying the respect in which any representation or warranty is no longer true or the agreement that has not been performed.

e. Certificates of Authority. Such certificates as are necessary or reasonably required by Buyer or the Title Company to evidence the authority of Seller and its signatories to execute the instruments to be executed by Seller in connection with this Agreement, and evidence that the execution of such instruments is the official act and deed of Seller.

f. Excise Tax Affidavit. A real estate excise tax affidavit signed by Seller or its agent reasonably satisfactory to the Title Company and Buyer.

8.2. By Buyer. Buyer shall deliver or cause to be delivered to Escrow Holder on or before the Closing Date, the delivery of each of which shall be a condition to the performance by Seller of its obligations under this Agreement:

a. Closing Funds. Cash by federal funds, wire transfer or cashier's check in the amount necessary to pay the portion (after applying the Deposit) of the Purchase Price due at Closing and Buyer's share of Closing costs and prorations.

b. Excise Tax Affidavit. A real estate excise tax affidavit signed by Buyer or its agent reasonably satisfactory to the Title Company and Seller.

c. Certificates of Authority. Such certificates as are necessary or reasonably required by Seller or the Title Company to evidence the authority of Buyer and its signatories to execute the instruments to be executed by Buyer in connection with this Agreement, and evidence that the execution of such instruments is the official act and deed of Buyer.

9. CLOSE OF ESCROW.

9.1. Time. The close of escrow (the "Closing") shall occur at the offices of Escrow Holder on a date agreed to by the Parties, but not later than **February 29, 2024** (the "Closing Date"). When all documents and funds have been deposited with Escrow Holder and the Title Company is in a position to issue the Title Policy, Escrow Holder shall immediately proceed with Closing as provided in Section 9.2. The failure of either Seller or Buyer to be in position to close by the Closing Date, without lawful excuse under this Agreement, shall constitute a default by such Party.

9.2. Procedure. Escrow Holder shall proceed with Closing as follows:

- a. Obtain the release of the Property from any liens described in the Commitment except the Permitted Exceptions.
- b. Pay applicable real estate transfer excise taxes and record the Deed and complete the prorations.
- c. Issue and deliver the Title Policy to Buyer.
- d. Deliver to Buyer any other documents deposited by Seller into Escrow that are intended for Buyer.
- e. Deliver the Purchase Price less Seller's closing costs and Seller's share of prorations, to Seller.
- f. Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each Party and copies of all executed and recorded or filed documents deposited into escrow, with such recording and filing date endorsed thereon.

9.3. Incorporation of Escrow Instructions. This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Escrow Holder following its execution. The Parties shall execute additional escrow instructions if required by Escrow Holder provided that such additional escrow instructions shall not change the terms of this Agreement without mutual agreement of the Parties.

9.4. Closing Costs and Prorations.

a. **Closing Costs.** Buyer and Seller shall each pay their own attorneys' fees. Buyer shall pay the cost of recording the Deed and one-half (1/2) of the escrow fees. Seller shall pay the real estate transfer excise taxes, one-half (1/2) of escrow fees and the title insurance premium charged by the Title Company for a standard owner's policy. If required by Buyer, Buyer shall pay the additional premium charged by the Title Company for extended coverage and the endorsements and the cost of the Survey.

b. **Prorations.** Seller shall be responsible for paying real property taxes, general assessments, utilities and operating expenses relating to the Property through the Closing Date including, for these purposes, any additional or deferred taxes due as a consequence of the Property ceasing to be eligible for a current use classification under RCW Ch. 84.34 or similar law. Any special assessments against the Property in existence as of the Closing Date shall be paid in full by Seller. All expenses of the Property, including but not limited to, real

property taxes, rents, utility charges, amounts payable under contracts, annual permits and other expenses normal to ownership, use, operation and maintenance of the Property shall be prorated as of 12:01 a.m. on the Closing Date. After Closing, Buyer and Seller shall reconcile the actual amounts of revenues and expenses upon receipt or payment thereof to the extent those items were prorated or credited at Closing based on estimates.

9.5. Possession. Possession of the Property shall be delivered to Buyer upon Closing.

9.6. Deliveries Outside of Escrow. On the Closing Date, Seller shall deliver to Buyer outside of Escrow all books and records of account, contracts, leases and leasing correspondence, receipts for deposits, unpaid bills and other papers pertaining to the Property, architectural and engineering plans, drawings and specifications for the improvements to the Property, all "As-Built" plans and specifications, original operating permits and certificates relating to use, occupancy or operation of the Property, all advertising materials, booklets, keys and other items, if any, used in operation of the Property.

10. BROKERAGE COMMISSION. Each Party represents and warrants to the other Party that its sole contact with the other and with the Property regarding this transaction has been directly with the other Party and has not involved any broker or finder. Seller and Buyer further warrant to each other that no broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and that Party with respect to the other Party or the Property. Each Party shall indemnify, defend and hold the other Party harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Property and this Agreement resulting from the indemnifying Party's actions. The obligations of the Parties under this Section shall survive the termination of this Agreement.

11. CASUALTY OR CONDEMNATION.

11.1. If there is a condemnation of all or part of the Property initiated before Closing, Seller shall promptly notify Buyer and Buyer shall have the option for ten (10) Business Days following the date the notice is received either to, by notice to Seller: (i) proceed with the Closing, in which event all condemnation proceeds received by Seller prior to Closing shall be paid to Buyer and the right to receive such proceeds not yet received by Seller shall be assigned to Buyer at the Closing, or (ii) terminate this Agreement. Unless this Agreement is terminated, Seller shall take no action with respect to any condemnation proceedings without the prior written consent of Buyer.

11.2. Before Closing, the entire risk of loss or damage by casualty to the Property however caused shall be borne and assumed by Seller. Seller shall promptly notify Buyer of any casualty:

a. If the casualty to the Property would cost less than \$10,000.00 to repair, there will be no termination of this Agreement; or

b. If the casualty to the Property would cost \$10,000.00 or more to repair, Buyer shall have the option for ten (10) Business Days following the date the notice is received either to, by notice to Seller: (i) proceed with the Closing, in which event all insurance proceeds received by Seller shall (at Buyer's election) be applied by Seller to the repair of the Property or if not applied or received prior to Closing, assigned to Buyer at Closing, or (ii) terminate this Agreement.

In either event, Seller is responsible for performing all repairs to the reasonable satisfaction of Buyer and paying the full cost of the repairs even if insurance proceeds are insufficient to pay for all repairs. If repairs are not completed by Closing, then the remaining cost of repair shall be withheld by Buyer from the Purchase Price and paid over to Seller upon Seller's completion of the repairs to Buyer's reasonable satisfaction.

11.3 The termination of this Agreement by Buyer under this Section 11 shall be by notice to Seller and Escrow Holder in which event the Earnest Money Note or Deposit shall be returned to Buyer, any other items delivered to the Escrow Holder shall be returned to the Party who delivered it, and neither Party shall have any further rights or obligations under this Agreement other than those obligations which are expressly provided as surviving the termination of this Agreement.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS.

12.1. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants contained elsewhere in this Agreement, Seller, as of the date of this Agreement and as of the Closing Date, makes the following representations, warranties and covenants:

a. **Title.** Seller is the sole owner of the Property. At Closing, Buyer will acquire the entire fee simple estate and right, title and interest in and to the Property, free and clear of all recorded or unrecorded liens, encumbrances, covenants, restrictions, reservations, easements, options, tenancies, leases, encroachments, claims or other matters affecting title or possession of the Property, subject only to the Permitted Exceptions. Any existing financing as to the Property is not subject to any "lock out" or similar covenant which would prevent the lender's lien from being released at Closing.

b. **Agreements to Transfer or Encumber.** Seller has neither committed nor obligated itself in any manner whatsoever to sell, lease or encumber the Property or any interest therein to any person or entity other than Buyer.

c. **Compliance with Law.** To the best of Seller's knowledge, the Property complies in all material respects (both as to condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any

governmental authority having jurisdiction over the Property (including those related to zoning, building, subdivision, and engineering), including all conditions contained in any certificate of occupancy covering any of the Property. Seller has obtained all required permits or authorizations for such occupancy. Seller has no knowledge of any facts that might give rise to any violation of the foregoing matters.

d. Bankruptcy, Etc. No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened by a third party, or contemplated by Seller.

e. Litigation. There is no pending, or to the best of Seller's knowledge threatened, judicial, municipal or administrative proceedings with respect to Seller, this transaction or in any manner affecting the Property or in which Seller is or will be a party by reason of Seller's ownership of the Property or any portion thereof.

f. Notices. Seller has not received any notices from any insurance company, governmental agency or from any other persons or entities with respect to any violations or other matters concerning the Property.

g. Taxes and Assessments. Other than amounts disclosed by the Commitment, to the best of Seller's knowledge, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against the Property nor are any pending or threatened.

h. Tax Returns. Seller has filed all local, state and federal tax forms that are required to be filed by Seller, has paid all taxes due and payable by Seller to date and will pay all such taxes that become due and payable by Seller prior to the Closing.

i. Underground Storage Tanks. There are no cisterns, wells, subterranean storage or underground storage tanks on the Property and no underground storage tanks have been removed from the Property.

j. Violation of Property Restrictions. The Property and the current use, occupation and condition thereof do not violate any applicable deed restrictions or other covenants, restrictions or agreements (including, without limitation, any of the Permitted Exceptions), site plan approvals, zoning or urban redevelopment plans applicable to the Property. The conveyance of the Property will not constitute a violation of any subdivision ordinance.

k. Good Standing and Due Authority. Seller has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and

delivered by Seller and constitute the Seller's legal, valid and binding obligations enforceable against Seller in accordance with their terms. The consummation by Seller of the sale of the Property is not in violation of or in conflict with nor does it constitute a default under any term or provision of any agreement or instrument to which Seller is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority to which Seller is subject.

l. No Omissions. All representations and warranties made by Seller in this Agreement, and all information contained in any certificate furnished by Seller to Buyer in connection with this transaction, are free from any untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained herein or therein not misleading. The copies of any documents furnished to Buyer in connection with this transaction are true and complete copies of the documents they purport to be and to the best of Seller's knowledge contain no untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained therein not misleading.

m. Assumption of Liabilities. Buyer, by virtue of the purchase of the Property, will not be required to satisfy any liability or obligation of Seller arising prior to the Closing Date. Other than such liabilities or obligations expressly assumed in writing by Buyer or which result from any action or activities by or on behalf of Buyer after Closing, Seller will pay and discharge after Closing any and all liabilities and obligations of each and every kind arising out of or by virtue of the possession, ownership or use of the Property prior to Closing, and shall indemnify, defend and hold Buyer harmless therefrom. Without limiting the generality of the foregoing, any bills or invoices received by Buyer after Closing which relate to services rendered or goods delivered to Seller or the Property prior to Closing shall be paid by Seller upon presentation of such bill or invoice. Any amount paid by Buyer due to the failure of Seller to promptly satisfy its obligations hereunder shall be reimbursed by Seller together with interest thereon at the rate of 12% per annum from the date paid by Buyer.

n. Provide Further Information. From the Effective Date to the Closing Date, Seller will notify Buyer of each material event of which Seller becomes aware affecting the Property or any part thereof promptly upon learning of the occurrence of such event.

12.2. Effect of Buyer's Inspections. The representations, warranties and covenants made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

12.3 Buyer's Representation. In addition to the representations, warranties and covenants contained elsewhere in this Agreement, Buyer, as of the date

of this Agreement and as of the Closing Date, makes the following representations, warranties and covenants:

a. Good Standing. Buyer is a Washington municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington.

b. Due Authority. Buyer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligation under this Agreement and the transactions contemplated by this Agreement. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Buyer and constitute the Buyer's legal, valid and binding obligations enforceable against Buyer in accordance with their terms. The consummation by Buyer of the purchase of the Property is not in violation of or in conflict with nor does it constitute a default under any term or provision of any agreement or instrument to which Buyer is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority to which Buyer is subject.

13. ENVIRONMENTAL COMPLIANCE. In addition to and without limiting Sections 12 and 17, Seller represents, warrants, covenants and agrees:

13.1. Hazardous Substances. Seller has not used, generated, manufactured, produced, stored, released, discharged or disposed of, on, under, above or about the Land (or off-site of the Land that might affect the Land) or transported to or from the Land, any Hazardous Substance or allowed any other person or entity to do so. Seller has no knowledge, nor has Seller observed any questionable practice or conduct (including with respect to the acts or omissions of any prior owner of the Land) indicating, that any Hazardous Substance has been used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or above the Land (or off-site of the Land that might affect the Land) or transported to or from the Land by any entity, firm or person, or from any source whatsoever.

13.2. Pre-Closing Covenant. Seller will not prior to Closing use, generate, manufacture, produce, store, release, discharge or dispose of on, under, above or about the Land (or off-site of the Land that might affect the Land), or transport to or from the Land, any Hazardous Substance or authorize any other person or entity to do so.

13.3. Environmental Indemnity. Seller shall protect, indemnify, hold harmless and defend Buyer and its directors, officers, contractors, employees, agents, parents, subsidiaries, successors and assigns from and against any and all loss, damage, cost, expense or liability (including attorneys' fees and costs) directly or indirectly arising out of or attributable to a breach of any representation, warranty, covenant or agreement contained in this Section 13 including, without limitation: (i) all consequential damages,

and (ii) the costs of any required or necessary repairs, cleanup or detoxification of any part of the Property and the preparation and implementation of any closure, remedial or other required plans.

13.4. Definitions. The term "Hazardous Substance" includes, without limitation (i) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", "hazardous wastes" or "solid waste" in any Environmental Law; (ii) petroleum products and petroleum byproducts; (iii) polychlorinated biphenyls; and (iv) chlorinated solvents. The term "Environmental Law" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions or hazardous substances.

14. INDEMNIFICATION.

14.1. Seller's Indemnity. Seller shall pay, protect, defend, indemnify and hold Buyer and its successors and assigns harmless from and against any and all loss, liability, damage and expense suffered or incurred by reason of: (i) the breach of any representation, warranty or agreement of Seller set forth in this Agreement; (ii) the ownership, maintenance, and/or operation of the Property by Seller prior to Closing; or (iii) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Seller, its representatives, employees, contractor or suppliers that occurred before Closing. Seller shall defend any claim covered by this indemnity using counsel reasonably acceptable to Buyer.

14.2. Buyer's Indemnity. Subject to Section 3.3, Buyer shall pay, protect, defend, indemnify and hold Seller and its successors and assigns harmless from and against any and all loss, liability, damage and expense suffered or incurred by reason of: (i) the breach of any representation, warranty or agreement of Buyer set forth in this Agreement; (ii) the ownership, maintenance, and/or operation of the Property by Buyer after Closing; or (iii) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of Buyer, its representatives, employees, contractor or suppliers that occurred after Closing. Buyer shall defend any claim covered by this indemnity using counsel reasonably acceptable to Seller.

15. SURVIVAL. The covenants, agreements, representations, warranties made in this Agreement, and the remedies and indemnities provided for in this Agreement, shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

16. ENTIRE AGREEMENT. This Agreement contains the entire integrated agreement of the Parties, including all of the covenants and conditions between the Parties with respect to the subject matter of this Agreement, and supersedes all prior correspondence, agreements and understandings, both verbal and written. No addition or modification of any term or provision of this Agreement shall be effective unless set

forth in writing and signed by Seller and Buyer. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

17. DEFAULT; REMEDIES

17.1. Specific Performance. This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the Parties. Consequently, if Seller breaches or defaults under this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions hereof, Buyer shall have, in addition to a claim for damages for such breach or default, and in addition and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right: (i) to specific performance of this Agreement; or (ii) to terminate this Agreement by notice to Seller and Escrow Holder in which event the Earnest Money Note or Deposit shall be returned to Buyer, any other items delivered to the Escrow Holder shall be returned to the Party who delivered it, and neither Party shall have any further rights or obligations under this Agreement other than those obligations which are expressly provided as surviving the termination of this Agreement.

17.2. Attorneys' Fees. If either Party brings an action or other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder or thereunder, the Party prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the other Party, and in the event any judgment is obtained by the prevailing Party all such costs and attorneys' fees shall be included in the judgment.

18. NOTICES. All notices required to be given pursuant to the terms hereof are required to be in writing and shall be either delivered personally, deposited in the United States mail, certified mail, return receipt requested, postage prepaid, sent by facsimile so long as receipt is confirmed, or sent by email so long as receipt is confirmed, and addressed to the addresses listed below with copies to the Parties listed after such address:

SELLER: Clifford Probst 12518 Emerald Ridge Blvd E Puyallup, WA 98374 Phone: (253) 345-9413 E-Mail: captaince40@gmail.com Facsimile: _____	BUYER: Metropolitan Park District of Tacoma Attn: Executive Director 4702 S. 19th Street Tacoma, WA 98405 Phone: 253.305.1090 E-Mail: shons@tacomaparks.com Facsimile: _____
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The foregoing addresses may be changed by notice to the other Party as provided herein. Mailed notice properly given shall be deemed received four (4) days after deposit in the

mail. Facsimile transmission of any signed original document or notice, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either Party or the Escrow Holder, the Parties will confirm facsimile transmitted signatures by signing an original document.

19. PARTIAL INVALIDITY. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

20. WAIVERS. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

21. CONSTRUCTION. Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. If the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a Business Day, the action shall be taken on the next succeeding Business Day.

22. TIME. Time is of the essence for every provision of this Agreement. As used in this Agreement, the term "Business Days" refers to Monday – Friday other than legal holidays in the State of Washington.

23. FORCE MAJEURE. Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, pandemic, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the Party who is obligated to render performance (but excluding financial inability to perform, however caused). A Party desiring to assert force majeure is required to promptly notify the other Party of the event upon which the assertion will be based and thereafter provide the other Party with such information regarding the event and its duration as the other Party may reasonably request.

24. ASSIGNMENT. Neither Party may assign any or all of its rights or obligations under this Agreement to any other third party without the prior written consent of the other Party, which Party's consent may condition, deny, or grant in that Party's sole discretion.

25. SUCCESSORS. The terms, conditions and covenants contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto. Any assignment by a Party shall not relieve the assignor

of its obligations under this Agreement except that if the original Buyer shall have assigned its rights under this Agreement and Closing shall thereafter occur, then the assignor shall no longer have any rights, liabilities or obligations under, and instead the assignee that actually acquires title to the Property at Closing shall have all rights, liabilities and obligations under, this Agreement and under any other agreement, instrument or other writing executed incident to the Closing.

26. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Washington.

27. RECITALS AND EXHIBITS. The Recitals and Exhibits are incorporated into this Agreement by this reference.

28. COUNTERPARTS. This Agreement may be signed in counterparts, any of which shall be deemed an original.

28. ACCEPTANCE; COUNTEROFFERS. Seller has until midnight of December 20, 2022 to accept this offer, unless sooner withdrawn. If this offer is not timely accepted, it shall lapse and the Earnest Money Note shall be returned to Buyer. If either Party makes a future counteroffer, the other party shall have until 5:00 p.m. on the second Business Day following receipt to accept the counteroffer, unless sooner withdrawn. If the counteroffer is not timely accepted or countered, this Agreement shall lapse and the Earnest Money Note shall be returned to Buyer. No acceptance, offer or counteroffer from the Buyer is effective until a signed copy is received by the Seller. No acceptance, offer or counteroffer from the Seller is effective until a signed copy is received by the Buyer. "Mutual Acceptance" shall occur when the last counteroffer is signed by the offeree, and the fully-signed counteroffer has been received by the offeror.

28. VALIDITY. This Agreement shall be void and of no force and effect unless signed by Seller, and returned to Buyer, by the date specified in Section 28 above.

29. EFFECTIVE DATE. This Agreement shall be effective as of the last date on which both Parties have signed this Agreement (the "Effective Date").

Signature Page and Exhibits Follow


<p>SELLER:</p>  <p>_____ CLIFFORD PROBST</p> <p>Dated: January <u>24</u>, 2024</p>	<p>BUYER:</p> <p>METROPOLITAN PARK DISTRICT OF TACOMA, a municipal corporation</p> <p>By: _____ SHON SYLVIA Its Executive Director</p> <p>Dated: January ____, 2024</p>
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EXHIBIT LIST

- A** Legal Description
- B** Depiction of the Land
- C** Form of Earnest Money Note
- D** Aegis Land Title Group Preliminary Commitment No. 1188227 dated August 3, 2022.

EXHIBIT A
LEGAL DESCRIPTION

Parcel A:

The East half of the North two acres of the North half of the South half of the Southwest quarter of the Northwest quarter of the Southwest quarter of Section 23, Township 20 North, Range 3 East of the W.M., in Pierce County, Washington.

Parcel B:

The South half of the South half of the Southwest quarter of the Northwest quarter of the Southwest quarter of Section 23, Township 20 North, Range 3 East of the W.M., in Pierce County, Washington.

Parcel C:

The South one-half acre of the North half of the South half of the Southwest quarter of the Northwest quarter of the Southwest quarter of Section 23, Township 20 North, Range 3 East of the W.M., in Pierce County, Washington.

Together with the West five acres of the North 10 acres of Government Lot 1 inside the Puyallup Indian Reservation in Section 23, Township 20 North, Range 3 East, W.M., in Pierce County, Washington.

Except for that portion beginning at the Northwest corner of said West 5 acres;
Thence South 88°16'18" East 638.21 feet along the North line of said Lot 1 to the true point of beginning;
Thence continuing South 88°16'18" East 25.37 feet to the Northeast corner of said West 5 acres;
Thence South 1°17'29" West along the East line of said West 5 acres a distance of 335.82 feet;
Thence North 88°16'18" West 72.48 feet;
Thence North 8°58'19" East 74.87 feet;
Thence North 7°32'47" East 110.63 feet;
Thence North 6°04'28" East 68.17 feet;
Thence North 14°22'03" East 85.58 feet to the point of beginning.

Situate in the City of Tacoma, County of Pierce, State of Washington.

Pierce County Tax Parcel Nos. 032023-3-103 and 032023-3-104.

EXHIBIT B
DEPICTION OF THE LAND



EXHIBIT C
FORM OF EARNEST MONEY PROMISSORY NOTE

EARNEST MONEY PROMISSORY NOTE

\$10,000.00

Tacoma, Washington
January ____, 2024

FOR VALUE RECEIVED, the undersigned promises to pay CLIFFORD PROBST ("Seller"), and to deliver such payment to Escrow Holder (upon the terms set forth in the Purchase and Sale Agreement dated January 24, 2024, between Seller and the undersigned as Buyer (the "Agreement"), the sum of Ten Thousand dollars (\$10,000.00) with no interest thereon, payable concurrently with, and only upon, the issuance by the undersigned of the Due Diligence Satisfaction Notice (as that term is defined in the Agreement).

Metropolitan Park District of Tacoma,
a Washington municipal corporation

By: _____
SHON SYLVIA
Its Executive Director

EXHIBIT D
Aegis Land Title Group
Preliminary Commitment No. 1188227 dated August 3, 2022
(Consists of 25 Pages)



MEMORANDUM

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

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

SUBJECT: Building Lease Between the Boy Scouts of America Pacific Harbors Council and Metropolitan Park District of Tacoma

DATE: February 6, 2024

EXECUTIVE SUMMARY: This resolution authorizes the Executive Director to sign a 10-year lease for office space on the premises of the Boy Scouts of America Pacific Harbors Council building.

BACKGROUND: In 1999 Metro Parks Tacoma's (MPT) mission was to contribute to the well-being of the community by providing the best park, recreational, educational, zoological, botanical and youth opportunities while preserving and enhancing MPT resources. The Pacific Harbor Council, Boy Scouts of America (BSA), a private non-profit, congressionally chartered volunteer organization which provides recreational, educational and youth opportunities sought to reinforce scouting skills and values in youth through the Cub Scouts and Explorers programs.

Adjacent to MPT was property suitable for use by the BSA who desired to further MPT's mission statement. Metro Parks Tacoma and the Boy Scouts of America entered into a 99 year ground lease agreement.

BSA constructed a large building on the BSA Lease Property for its scout headquarters (the "BSA Building") As neighbors, the Parties have worked collaboratively to share space, including shared parking, access to facilities, maintenance, and meeting space. This arrangement changed during COVID-19, where MPT significantly downsized staffing and vacated the building.

Post COVID-19, MPT has again grown in size to support its Parks & Recreation programming, Beyond the Bell and Club B after school programs and seeks additional office space for its staff and the BSA Building currently has sufficient space to meet MPT's needs and still retain adequate future space for BSA to grow.

BSA agrees to lease certain open area (bullpen) space and two offices within the BSA Building to MPT and negotiated terms and conditions for a 10-year period.

The annual and total costs for this lease are depicted below in Fiscal Impact.

FISCAL IMPACT: The lease schedule is as follows, and will be paid from Parks & Recreation Operating Funds:

Year	Period	PSF Rent	Monthly Rent
1	January 1, 2024 – February 29, 2024	\$0	\$0
1	March 1, 2024 – December 31, 2024	\$19.00	\$5,776
2	January 1, 2025 – December 31, 2025	\$19.76	\$6,007
3	January 1, 2026 – December 31, 2026	\$20.55	\$6,247
4	January 1, 2027 – December 31, 2027	\$21.37	\$6,496
5	January 1, 2028 – December 31, 2028	\$22.22	\$6,754
6	January 1, 2029 – December 31, 2029	\$23.11	\$7,025
7	January 1, 2030 – December 31, 2030	\$24.04	\$7,308
8	January 1, 2031 – December 31, 2031	\$25.00	\$7,600
9	January 1, 2032 – December 31, 2032	\$26.00	\$7,904
10	January 1, 2032 – December 31, 2032	\$27.04	\$8,220

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

METROPOLITAN PARK DISTRICT OF TACOMA

RESOLUTION NO. R11-24

BUILDING LEASE BETWEEN THE BOY SCOUTS OF AMERICA PACIFIC HARBORS COUNCIL AND METROPOLITAN PARK DISTRICT OF TACOMA

WHEREAS, Metro Parks Tacoma and the Boy Scouts of America have identified office space at the Boy Scouts Building to support the growing programming needs of Parks & Recreation's Beyond the Bell and Club B programs; and

WHEREAS, Metro Parks Tacoma and the Boy Scouts of America have worked cooperatively to identify the square footage to be leased at the Boy Scouts Building; Therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma to authorize the Executive Director or designee is authorized the office space lease agreement between the Metropolitan Park District of Tacoma and the Pacific Harbor Council Boy Scouts of America and is further authorized to negotiate any additional on-going administrative and operating terms between the Metropolitan Park District of Tacoma and the Pacific Harbor Council Boy Scouts of America.

The foregoing resolution was adopted by the Board of Park Commissioners of the Metropolitan Park District of Tacoma at a meeting held on _____, 2024.

ATTEST:

President

Secretary

Clerk