

**GCB 3780**  
**AGREEMENT FOR FUNDING OF RECREATIONAL IMPROVEMENTS AS MITIGATION FOR**  
**THE SR 520 PORTAGE BAY BRIDGE ROANOKE LID PROJECT**

**BETWEEN WASHINGTON STATE DEPARTMENT OF TRANSPORTATION AND**  
**CITY OF SEATTLE PARKS AND RECREATION**

This Interagency Agreement, hereinafter referred to as “Agreement,” is entered into by and between the CITY OF SEATTLE (City), acting by and through its Department of SEATTLE PARKS AND RECREATION (SPR) and the STATE OF WASHINGTON, acting by and through its Department of Transportation (WSDOT). SPR and WSDOT are each referred to as a “Party” and are collectively referred to as the “Parties.”

1. WSDOT applied to the City for approval of a Shoreline Substantial Development Permit for the Portage Bay Bridge Roanoke Lid portion of the SR 520, I-5 to Medina: Bridge Replacement and HOV Project (the “Project”), and on July 28, 2022, the Seattle Department of Construction and Inspections (SDCI) issued its ANALYSIS AND DECISION OF THE DIRECTOR OF THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS (the “Shoreline Decision”), an excerpt of which is attached as Exhibit A, conditionally approving the Shoreline Substantial Development Permit.

2. WSDOT wishes to satisfy the conditions contained within the Shoreline Decision for the Portage Bay Bridge Roanoke Lid portion of the Project (the “PBB”), and one of the conditions of the Shoreline Substantial Development Permit requires that WSDOT provide funds to Seattle Parks and Recreation Department to support the design and construction of certain recreational improvements as mitigation measures for recreational impacts to the PBB Project.

NOW THEREFORE, by virtue of 39.34 RCW, in consideration of the mutual terms, conditions, covenants and performances contained herein, including Exhibit A, IT IS MUTUALLY AGREED AS FOLLOWS:

**1.0 PURPOSE**

The purpose of this Agreement is to establish the means by which WSDOT will fulfill condition 7. *Parks and Recreation Access* (Condition 7), noted as additional mitigation measures for recreation impacts in the Shoreline Decision. Condition 7. states the following:

**7. *Parks and Recreational Access***

*Background and details of BMPs and mitigation measures for recreational and parks impacts of this project as incorporated in this project are provided in project documents, including Project Description and Supplemental Information (2021).*

*Additionally, in response to public comments regarding construction impacts and mitigation regarding parks and recreational access, WSDOT stated in the project application:*

*“During the public comment period, community members requested inclusion of the following recreational projects as part of the shoreline permit.*

- *East Everett Street End water access park*

- *Trail connection from Montlake Playfield to West Montlake Park*
- *Shoreline nature trail from the Mountlake Playfield boat launch to the Bill Dawson Trail*
- *Widen and harden the 15th Avenue East trail and nearby meadow loop trail*
- *Improvement of Montlake Playfield kayak launch*
- *Improved link to Portage Bay shoreline with upland areas and nearby neighborhoods*

*The Portage Bay Bridge and Roanoke Lid Project conceptual design includes recreational improvements, including the extension of the 14-foot-wide regional SR 520 Trail over Portage Bay connecting to the new Roanoke Lid. The SR 520 Trail was added to the project after WSDOT received the original SR 520 shoreline decision in 2012 due to strong support for the addition of the trail. In addition to the recreational elements included in the project design, WSDOT has proposed providing funding to Seattle Parks and Recreation (SPR) to make recreational improvements in the south Portage Bay and Montlake Playfield area. SDCI will make the final determination on what recreational mitigation will be included in the permit.”*

*Based on SDCI’s consultation with Seattle Parks and Recreation Department regarding potential costs of the mitigation alternatives mentioned above, SDCI has determined WSDOT shall provide \$700,000 toward the design and construction of all or a portion of these mitigation alternatives (listed above) as limited by reasonable project feasibility and in coordination with neighborhood representatives and stakeholders through a public process directed by the Parks Department. WSDOT shall provide documentation that these funds have been properly received by Parks Department to SDCI.*

## **2.0 PARTY RESPONSIBILITIES**

2.1 The Parties agree that upon payment by WSDOT to SPR, the Settlement Payment, described in Section 3.0 herein, fully and fairly fulfills the requirements of Condition 7 of the Shoreline Decision.

2.2 In exchange for the Settlement Payment, SPR agrees to carry out the obligations set out in Condition 7 of the Shoreline Decision for implementing the recreational projects. SPR will be solely responsible for public outreach and communication, design, permitting, construction, ownership, and continued maintenance of the recreational projects listed in Condition 7 of the Shoreline Decision.

2.3 The Parties agree that should SPR determine through the public process and collaboration with relevant permitting authorities that the recreational project(s) are infeasible, SPR shall develop a contingency plan. The contingency plan shall identify alternative, unfunded parks and recreation project(s) in the SR 520 corridor that have similar or equivalent value to the affected community as the recreational projects listed in Condition 7. Development and performance of the contingency plan shall be the sole responsibility of SPR and shall not commit WSDOT to any additional participation or funding. Except as specifically limited in this section, SPR shall retain full discretion to determine how to implement Condition 7, including which mitigation projects to implement and how to implement those projects.

2.4 SPR agrees to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this Agreement when required by state law to do so, and to

comply with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where services for this Agreement will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this Agreement as though fully set forth herein.

2.5 SPR agrees to indemnify and hold WSDOT harmless for any costs, claims, penalties, arising from claims by third parties in the construction, maintenance and operation of all projects performed and facilities constructed by SPR in the performance of this Agreement. This requirement shall extend beyond the termination of this Agreement. The City's obligations under this indemnification shall not exceed the appropriation authorized at the time the City must fulfill its indemnity obligations and nothing in this Agreement may be considered as insuring that the City will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the City's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

### **3.0 SETTLEMENT PAYMENT**

Within Sixty (60) calendar days of execution of this Agreement, WSDOT shall pay SPR a lump sum settlement payment (Settlement Payment) of Seven Hundred Thousand Dollars (\$700,000). An executed copy of this Agreement shall serve as an invoice for the payment, and SPR will provide a written receipt for funds within thirty (30) days of delivery.

### **4.0 AMENDMENT**

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

### **5.0 TERM AND TERMINATION**

5.1 This Agreement shall begin upon execution by both Parties and shall, unless sooner terminated pursuant to the terms of Section 5.2, remain in effect until the Settlement Payment has been made by WSDOT to SPR per Section 3.0.

5.2 Neither WSDOT nor SPR may terminate this Agreement without the concurrence of the other Party. Termination, if mutually agreed upon, will be in writing and signed by persons authorized to bind each of the Parties.

### **6.0 SEVERABILITY**

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

### **7.0 WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this

Agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

## **8.0 GOVERNING LAW AND VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

## **9.0 ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld. SPR's hiring of contractors, subcontractors or agents to carry out the projects set out in Section 2 shall not be deemed an assignment of this Agreement and shall not require WSDOT's prior written consent.

## **10.0 ASSURANCES**

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

## **11.0 DISPUTES**

11.1 In event a dispute arises under this Agreement, the Parties shall work in good faith and collaboratively to resolve the dispute promptly and at lowest organizational level.

11.2 If a dispute cannot be resolved promptly, the disputing Party shall notify the other Party in writing of the issue the disputing Party believes needs resolution. The Parties shall meet and attempt to resolve the dispute within seven (7) calendar days after receiving written notice. In the event the Parties cannot resolve the dispute, WSDOT's SR 520 Program Administrator or designee and SPR's Superintendent or designee, shall meet within seven (7) calendar days after receiving notice and engage in good faith negotiations to resolve the dispute.

11.3 In event a dispute cannot be resolved by Directors of the Parties, the Parties agree to enter into non-binding mediation facilitated by a mutually agreed upon mediator before exercising any other legal remedy. Each Party shall be responsible for its own fees and costs, including attorneys' fees. The Parties agree to equally share in cost of mediator, meeting facilities, and all other direct expenses associated with mediation. If the Parties are unable to resolve the dispute within ninety (90) calendar days through mediation, either Party may declare that the Dispute process has been exhausted and seek relief in court. Each Party shall be responsible for its own fees and costs, including court and attorneys' fees.

## **12.0 NOTICES AND DESIGNATED REPRESENTATIVES**

Any notice required or permitted to be given pursuant to this Agreement will be in writing and will be sent by electronic mail or postage prepaid by U.S. Mail to the designated representatives for each Party as follows:

For WSDOT:

Dawn Yankauskas, Deputy Program Administrator  
SR 520 and AWW Program  
Washington State Dept. of Transportation  
999 3rd Avenue, Suite 2200  
Seattle, WA 98104  
[YankaDR@wsdot.wa.gov](mailto:YankaDR@wsdot.wa.gov)

For SPR:

Christopher Williams, Acting Superintendent  
Seattle Parks and Recreation  
100 Dexter Ave. N.  
Seattle, WA 98109  
[Christopher.williams@seattle.gov](mailto:Christopher.williams@seattle.gov)

**13.0 COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement.

**14.0 AUTHORITY TO EXECUTE**

Both Parties and their representatives executing this Agreement represent and warrant that they are authorized to execute this Agreement, on their own behalf and on behalf of their respective party.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Parties' date last signed below.

**WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Omar Jepperson, P.E., DBIA  
Program Administrator  
AWV and SR 520 Program

Date: \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Brian Thompson  
Assistant Attorney General

Date: \_\_\_\_\_

**SEATTLE PARKS AND RECREATION**

\_\_\_\_\_  
Christopher Williams  
Acting Superintendent

Date: \_\_\_\_\_