

**CITY OF SEATAC
DISTRIBUTION SCHEDULE**

Agreement #: 08-A110	Subject: ILA Agreement with Highline School District # 401 regarding Installation Agreement for Madrona Elementary School Walking Path
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Term: ? thru 07/01/33

Reference to: Mot. 2984 **Approved:** 08/12/08

Department/Contact: Parks and Receptions

	No.	Reference to:	Date approved:	Changes to Agreement per amendment:
Amendments:				

Comments: _____

Bid List for Destruction: N/A

Retain this record until after: 07/01/43

Date Reviewed by Deputy City Clerk: _____

**INTERLOCAL AGREEMENT BETWEEN CITY OF SEATAC
AND HIGHLINE SCHOOL DISTRICT NO. 401**

Installation Agreement for Madrona Elementary School Walking Path

THIS INTERLOCAL AGREEMENT ("Agreement") by and between the Highline School District No. 401 and the City of SeaTac, both municipal corporations under the laws of the State of Washington, hereafter referred to as "District" and "City" respectively.

WHEREAS, chapter 39.34, RCW (Interlocal Cooperation Act) permits local government units to make the most efficient use of their powers by enabling them to cooperate with other governments entities on the basis of mutual advantages and thereby to provide services and facilities in a manner pursuant to forms of governmental organizations that will accord best with geographic, economic population, and other factors influencing the needs and development of local communities; and

WHEREAS, the City has received some funds to pay for improvements at Madrona Elementary School, which is owned by the District and located on the real property legally described on Exhibit B attached hereto ("Property"); and

WHEREAS, the District has agreed to open the playground facilities and Property at certain times to the public and to the City Parks and Recreation Department; and

WHEREAS, the City and the District desire to enter into an agreement to provide for the installation of the walking path and improvements by the City.

NOW, THEREFORE, the District and the City agree as follows:

1. PURPOSE AND PROJECT DEFINITION

- 1.1 The primary purpose of this Agreement is to provide an arrangement between the District and the City to (a) provide for the City to install a walking path and improvements located on the Property, as depicted generally on Exhibit A hereto ("Walking Path"), (b) allow the City and the general public to use the Walking Path at times that do not conflict with the District's exclusive use of the Walking Path during regular school hours, and (c) provide for the District to undertake certain maintenance of the Walking Path at Madrona Elementary School, and thereby facilitate its ongoing recreational use by the City and the general public.

2. LIMITATIONS OF CITY'S USE

- 2.1 The City may use the Walking Path for uses normal and incident to the Walking Path, including, but not limited to, recreational programming. Community use by the public of the Walking Path is also authorized, so long as such use does not conflict with the District's School Board Policy or with the District's mission.
- 2.2 The City shall not use or permit the Walking Path or any part thereof to be used in violation of any federal, state, county or municipal law, rule, regulation, or ordinance. No tobacco, alcohol or gun use shall be allowed anywhere on the site of the Madrona Elementary School at any time.

- 2.3 The City's use of the Walking Path shall be conducted at times outside of normal school hours and the City shall coordinate the use of the Walking Path with the District on an ongoing basis.
- 2.4 The City acknowledges that the Walking Path is part of the Madrona Elementary School and dedicated to school purposes. Any use of the Walking Path by the City shall be made in such a way as to not conflict with the District's mission or hamper the District's exclusive use of the Walking Path during regular school hours. All City uses of the Walking Path will be scheduled and overseen by the City, in accordance with the District's applicable school board policies.

3. CONTRACT ADMINISTRATOR

- 3.1 Pursuant to RCW 39.34.030(4)(a), the District and the City hereby appoint a "Contract Administrator" who will be responsible for administering the Agreement, and, at the direction of the parties, the Contract Administrator shall take such action as is necessary to ensure that this Agreement is implemented in accordance with its terms. The parties hereby designate the Director of Facilities for the District as the Contract Administrator of this Agreement.
- 3.2 This Agreement does not create a separate legal or administrative entity, and consequently is being administered in accordance with RCW 39.34.030(4), as provided in paragraph 3.1.

4. REAL AND PERSONAL PROPERTY

- 4.1 The District owns the Property on which Madrona Elementary School is located. This Agreement does not contemplate the transfer of ownership of the Property nor limit the District's ability to comply with its statutory obligations regarding the use and disposition of school property pursuant to Ch. 28A.335 RCW.
- 4.2 The parties do not intend, during the term of and pursuant to this Agreement, to jointly acquire or hold any property (real or personal) with regard to the Walking Path.
- 4.3 By operation of this Agreement, the City acquires no ownership interest in and disclaims any such interest in the improvements constructed pursuant to this Agreement, which improvements shall be the District's property.

5. INSTALLATION, OPERATION AND MAINTENANCE OBLIGATIONS

- 5.1 The District shall:
 - 5.1.1 After completion of the installation of the Walking Path by the City, provide for the maintenance of the Walking Path in conjunction with its operation, maintenance and repair of the Madrona Elementary School, including, but not limited to, keeping the Walking Path in good order (subject to reasonable wear and tear), allowing no nuisances to exist

or be maintained therein, and repairing all damage caused by vandalism.

5.1.2 Provide the City with requests for reimbursement for expenses incurred by the District related to the repair of all damage caused by vandalism, subject to the limitations set forth in Paragraph 5.2.2 of this Agreement.

5.1.3 Maintain property damage insurance or coverage for unforeseen, unexpected and unintended risks of direct physical loss and damage with such limits and deductibles protecting the Property as the District determines is generally consistent with insurance or coverage the District normally and customarily with carries for other facilities and property of the type affected by this Agreement.

5.2 The City shall:

5.2.1 Install the Walking Path in accordance with all applicable laws and codes and in coordination with the District's use of the Property, by no later than May 31, 2009.

5.2.2 Reimburse the District for twenty-five percent (25%) of all costs to repair damage of the Walking Path caused by vandalism, as provided by this Agreement.

5.2.3 Not commit waste or permit waste to be committed on or to the Walking Path or the Property and take immediate action in a good faith effort to minimize losses that occur during the use of the Walking Path.

5.2.4 Provide for supervisory personnel for all organized City activities associated with the City's use of the Walking Path. However, this paragraph does not obligate the City to provide supervision for general use of the Walking Path by the general public.

5.2.5 For organized events sponsored by the City, provide the District with evidence of liability or coverage that reasonably informs the District for the dollar amount, kind of coverage, and effective date of coverage that the City expects to apply for its use of the Walking Path. Whenever allowed by the City's policy or other coverage, the District shall be named as an additional insured under such liability insurance or coverage. The City shall be liable to the District for any damage to the Walking Path caused by the City, its agents, employees or representatives and any other persons or entities' authorized to use the Walking Path by the City during a City-sponsored organized event.

6. ALTERATIONS AND IMPROVEMENTS

6.1 The City shall not make any alterations, additions or improvements to the Walking Path without the participation and consent of the District.

- 6.2 Any alterations, additions and improvements to the Walking Path made by or on behalf of the City, in accordance with this Section 6, shall become the property of the District upon installation without any obligation of the District to pay the City therefor.

7. EXPENDITURES TO BE REIMBURSED

- 7.1 No annual use fee will be charged to the City.
- 7.2 The City shall reimburse the District for the following items of expenditure associated with the City's use of the Walking Path.
 - 7.2.1 The City shall pay, within forty five (45) days of request for reimbursement with related invoices or evidence of sums expended, twenty-five percent (25%) of the repair costs to the District incurs pursuant to paragraph 5.2.2 of this Agreement.
- 7.3 No loss or damage by fire or other casualty, resulting in either partial or total destruction of the Walking Path, shall operate to terminate this Agreement, to relieve or discharge the City from the payment of amounts collectible under this Agreement, or from the performance of fulfillment of any of the City's obligations, or undertakings herein, unless the District elects to terminate because it determines, in its sole discretion, that the Madrona Elementary School or the Walking Path will not be reconstructed.

If the Walking Path or any part thereof are at any time or times during the continuance of this Agreement damaged or destroyed by fire or other casualty, the City shall share the costs of any expense for which the District is not required to hold insurance pursuant to this Agreement for the repair, reconstruction, and replacement of the Walking Path upon the same general plans and dimensions as before the occurrence of each fire or other casualty in proportion to the City's funding of the construction of the Walking Path.

8. DURATION AND TERMINATION

- 8.1 The term of this Agreement shall commence as of the date this Agreement is recorded and shall end on July 1, 2033, PROVIDED, that the City's use of the Walking Path is for lawful purpose, and does not interfere with the conduct of the District's educational program and related activities. This Agreement shall take effect upon filing a copy thereof with the County Auditor in accordance with RCW 39.34.040.
- 8.2 Termination of this Agreement may be accomplished by mutual agreement of the parties.
- 8.3 The District shall have the right to terminate this Agreement if the District elects to sell the tract upon which the Walking Path is located, or if the District elects to terminate due to casualty or destruction of Madrona Elementary School or the Walking Path.

- 8.4 In the event that the City fails to make payment under this Agreement when due or otherwise breaches any of the other covenants, agreements, stipulations or conditions herein, and such violation continues for a period of thirty (30) days after written notice of such violation, the District may, at its option, declare the Agreement forfeited and the term hereof ended. In the event of such termination, the City's use of the Walking Path shall cease.

9. MISCELLANEOUS

- 9.1 The District and the City provide no, and disclaims any and all, express or implied warranties of any kind, including but not limited to the warranty of fitness for a particular purpose, in connection with or arising out of the activities under this Agreement.
- 9.2 The District and the City shall maintain records necessary to carry out the purpose of this Agreement in accordance with generally accepted accounting principles. Such records shall be available during normal working hours for the review of the respective parties, their accounting representatives or the State Auditor.
- 9.3 This Agreement and all questions concerning the capacity of the parties, execution, validity (or invalidity), and performance of this Agreement, shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington. The Agreement has been negotiated and drafted by both parties and is not to be construed in favor of either party.
- 9.4 Nothing herein shall be interpreted to create any right or liability with respect to any person or entity not a signatory to this Agreement.
- 9.5 The parties are independent entities and nothing in the Agreement creates any agency relationship.
- 9.6 The District shall release, defend, indemnify and hold the City, and its officers, agents, employees, harmless from any and all claims, actions, suits, damages arising out of any action or omission of the District arising from its use of the Walking Path, including, without limitation, the actions of any third party authorized by the District to use the Walking Path.

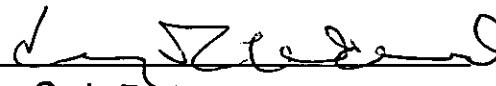
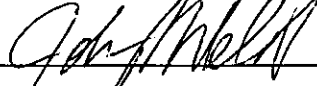
The City shall release, defend, indemnify and hold the District, and its officers, agents, employees, harmless from any and all claims, actions, suits, damages arising out of any action or omission of the City arising from its installation or use of the Walking Path, including, without limitation, the actions of any third party authorized by the City to install or use the Walking Path.

- 9.7 In the event of a dispute between the parties arising under this Agreement, the Director of Parks and Recreation of the City and the Director of Facilities Services of the District shall meet to attempt to resolve the dispute within thirty (30) days notice from the Contract Administrator of the existence of a dispute. In the event the Director of the Parks and Recreation of the City and Director of

Facilities Services of the District are unable to resolve the dispute within sixty (60) days notice from the Contract Administrator of the dispute, the parties shall submit the dispute to a mutually agreed upon private arbitrator for a binding resolution in accordance with the commercial arbitration rules of the American Arbitration Association. In the event the parties cannot agree on an arbitrator, one will be appointed by the Presiding Judge of the King County Superior Court, with costs of arbitration borne equally. Each party shall be responsible for its own attorneys' fees and costs related to said arbitration.

CITY OF SEATAC

HIGHLINE SCHOOL DISTRICT NO. 401

By:  By: 
Date: Craig R. Ward, City Manager Date: 9/26/08
10/12/08

APPROVED AS TO FORM this 10
Day of October, 2008.

By: 
City Attorney, City of SeaTac