

# MEMORANDUM OF AGREEMENT

Between

THE CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION

And

The Friends OF BALLARD CORNERS PARK

And

GROUNDSWELL NW

Regarding

THE DESIGN AND CONSTRUCTION OF BALLARD CORNERS PARK

This Memorandum of Agreement ("Agreement") is entered into by the Friends of Ballard Corners Park ("Friends"), a community group, Groundswell NW, a Washington state non-profit corporation, and the City of Seattle ("City"), a first class city of the State of Washington, acting through the Superintendent of its Department of Parks and Recreation (respectively, "Superintendent" and "Department").

## I. RECITALS

WHEREAS, Ballard Corners Park ("the Park") is a City-owned facility under the jurisdiction of the Department located at 1702 NW 62<sup>nd</sup> Street, Seattle, WA, in the Ballard neighborhood. The Ballard Corner Park site is identified as King County tax parcel numbers 2767601955 and 2767601960; and

WHEREAS, the Friends of Ballard Corners Park is a neighborhood group organized to help develop Ballard Corners Park; and

WHEREAS, Groundswell NW is a Washington state non-profit corporation whose mission is to create community parks and open space in NW Seattle, and is acting as fiscal sponsor of the Friends of Ballard Corners Park; and

WHEREAS, the City intends to fund the design, permitting and construction of the base bid layout for the Ballard Corner Park and the Friends intend to finance the design, permitting, and construction of the additive design elements for the Ballard Corner Park ("the Project") as well as intend to finance the design, permitting and construction of the new R.O. W. layout adjacent the park property when approved by the Seattle Department of Transportation; and

WHEREAS, the Friends are raising monies and securing pledges to pay for the additive design elements for the ("the Project") which include, but not limited to: a stone art sitting area, historic "store front" architectural façade, plaza/community gathering area, small play structure and community garden area; and

WHEREAS, specific grantors (City, County, State, and Corporate entities) ("Grantors") have pledged financial support for the Project; and

WHEREAS, the construction contract for the Project will be advertised, bid, awarded, and managed in accordance with the City's standards and public works processes;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

#### 1. Purpose

The purpose of this Agreement is to define the rights and obligations of the parties with respect to the design, permitting, financing, and construction of Ballard Corners Park, which is referred to in this Agreement as "the Project."

#### 2. Authority

The Department has jurisdiction and administrative authority over the Park. The Superintendent shall make all final decisions concerning the Park, its maintenance and operation. The Friends shall not make any changes, alterations, improvements, or additions to the Park without formal review and approval by the Parks ProView and ProTech Reviews, Project Steering, and the Superintendent.

#### 3. Ownership of Improvements and Purpose of Park:

The primary purpose of the park shall be a neighbor place to gather, relax, and play. Upon completion of the Project, the improvements shall become the City's property. The City shall agree to not alter the primary purpose of the Park for a period of at least ten (10) years after the completion of construction. This is to comply with the Washington State grant funding requirements.

The city will remain responsible for the maintenance and upkeep of the park, barring responsibilities retained by the Friends, specifically the maintenance of the portion of the park designated as a community garden.

#### 4. Term

Except as provided below, this Agreement shall remain in effect through the completion of construction, as evidenced by a letter of physical completion from the Park Engineer, except for alteration of the primary purpose of the park as described in Section 3.

Notwithstanding any provision of this Agreement to the contrary, the City may terminate this Agreement without liability of any kind if the Friends is unable to fulfill its financial obligations under Subsection 6.A, below.

The Friends may withdraw from and terminate this Project, without liability, only prior to award of the Project construction contract.

## 5. Park Improvements and Amenities

All Project costs shall be borne by the Friends except for those amounts identified in Subsection 6.B as the Department's responsibility. While the parties have estimated the final Project budget and the construction contract as shown in the chart below, these numbers represent the total of all funds available for this Project, and any commitment of funds (e.g. scope changes or cost overruns), beyond the estimated amounts (which include the contingency) requires the written approval of both parties.

### PROJECT BUDGET

### PROJECT BUDGET

	Spent by City	Spent by the Friends	Total
Design and Operational Expenses (to 50%)	\$0	\$30,000	\$30,000
Design Development Expenses (50% to 100%) of 'base bid'	\$14,711	\$0	\$14,711
Design Development Expenses (50% to 100%) of additives	\$0	\$36,738	\$36,738
civil engineering and SDOT permit fees for right of way improvements	\$0	\$23,000	\$23,000
1% for Arts	\$1500	\$0	\$1500
Design Commission Fee	\$495	\$0	\$495
Construction Cost Amount (including WSST)	* \$136,723	\$154,584	\$291,307
15% Contingency	\$0	\$52,826	\$52,826
Project Management and other City Fees (6.0% of CCA)	\$16,571	\$0	\$16,571
5% Fiscal Sponsor Fee	\$0	\$14,178	\$14,178
<b>Totals</b>	<b>\$170,000</b>	<b>\$311,326</b>	<b>\$481,326</b>
* Base Bid ( City's Amount)			

Revenue Source	City Control (CIP account)	Friends (Groundswell NW acct.)	Total
Pro-Parks Levy	\$150,000	\$0	\$150,000
DoN Small and Simple Grants	\$0	\$30,000	\$30,000
DoN Large Project Grant	\$0	\$75,000	\$75,000
King County Council	\$20,000	\$0	\$20,000

<b>Revenue Source</b>	<b>City Control (CIP account)</b>	<b>Friends (Groundswell NW acct.)</b>	<b>Total</b>
Seattle Foundation	\$0	\$3,000	\$3,000
Home Depot	\$0	\$3,000	\$3,000
State of Washington CTED	\$0	\$123,438	\$123,438
King County Metro/Waterworks	\$0	\$43,250	\$43,250
SPU Water Quality Grant	\$0	\$5,000	\$5,000
Neighbors' contributions	\$0	\$7,879	\$7,879
Monies yet to be raised	\$0	\$20,759	\$20,759
<b>Totals</b>	<b>\$170,000</b>	<b>\$311,326</b>	<b>\$481,326</b>

## 6. Scope of Work and Financial Contribution

### A. The Friends shall:

\*Appoint a single Friends representative to act as construction liaison who shall:

- 1) attend construction and design meetings; and
- 2) coordinate with the Department staff as necessary to revise the Project scope so as to stay within budget; and
- 3) report back to the Friends on monetary and physical progress of the Project; and
- 4) coordinate with Department staff regarding modification proposals; and
- 5) ensure timely transfer of contingency funds when needed for approved change orders.

The Friends will also direct Groundswell NW on behalf of the Friends to pay costs identified in this Agreement which are associated with work items outlined in Section 5 of this Agreement, up to the total amount of the Final Project Budget as indicated in Section 5 of this Agreement.

The Friends will endeavor to pass invoices onto Grantors in a timely matter to facilitate payment of costs associated with work items outline in Section 5 of this Agreement.

### B. The Department shall:

Contract with the Project landscape architect regarding the base bid design layout for the park; and

obtain permits related to the base bid design; and

direct the project landscape architect to coordinate with the Friends regarding the additive design elements being funded by the Friends and shall incorporate them into the bid base construction documents; and

Pay costs identified in this Agreement which are associated with work items outlined in Section 5 of this Agreement, up to the total amount of the Final Project Budget as indicated in Section 5 of this Agreement.

C. Groundswell NW shall:

Act as fiscal sponsor for the Friends of Ballard Corners Park. Groundswell NW shall receive and deposit funds on behalf of the Friends. Groundswell NW shall pay, upon request of the Friends, to parties designated by the Friends, funds as needed to complete the project. Groundswell NW will assist in the preparation of invoices to be delivered to granting agencies.

Charge a 5% fee for acting as the fiscal sponsor. The fee will be charged on receipt of funds.

Endeavor to pass invoices onto Grantors in a timely manner when presented by the Friends.

Endeavor to pay contractors promptly upon receipt of funds from Grantors.

## 7. Dispute Resolution

The parties will work cooperatively to resolve all issues. If a dispute should arise, the Department's project manager will meet with the Friends co-chair(s) or steering committee to resolve the issue. Any problems not finding resolution at this level will be escalated through a clear line of communication. First, the co-chair(s) of the Friends of Ballard Corners Park will meet with the Seattle Parks and Recreation, Director of Planning and Development. If no resolution is reached at this level, the co-chair(s) of the Friends of Ballard Corners Park will meet with the Superintendent of the Department of Parks and Recreation. If no resolution is reached at this level, mediation and finally the Superior Court of the State of Washington for King County will be the avenues for dispute resolution.

## 8. Compliance with Law

All parties shall comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and Ordinances of the City of Seattle.

## 9. Relationship of Parties

Nothing in this Agreement shall be construed to create a partnership, joint venture, or employment relationship between the parties.

#### 10. Applicable Law; Venue

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.

#### 11. Entire Agreement

This Agreement contains all of the covenants, promises, agreements, and conditions, between the parties. No verbal agreements or conversations between any officer, agent, associate or employee of the City and any officer, agency, or employee prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement. Any such verbal agreements shall be considered unofficial information and in no way binding on either party.

#### 12. Notices

Notices under this agreement shall be in writing and be effective on the date received. Notices shall be delivered to the following address and facsimile numbers:

City:	Seattle Parks and Recreation Planning and Development Division 800 Maynard Ave. S., 3 <sup>rd</sup> FL Seattle, WA 98134-1336 Fax: 206-233-3949
-------	---

Friends of Ballard Corners Park:	1725 NW 64 <sup>th</sup> St Seattle, WA 98107 Fax: 206-523-5312
----------------------------------	---

Groundswell NW:	PO Box 17163 Seattle WA 98127 Fax: 206-874-1530
-----------------	---

#### 13. Time of the Essence

The parties agree that time is of the essence of this Agreement.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representatives affix their signatures below.

FRIENDS OF BALLARD CORNERS PARK

By

David Folweiler, co-chair

Friends of Ballard Corners Park

DATED \_\_\_\_\_

GROUNDSWELL NW

By

David Boyd and/or Andrea Faste, Board Co-Presidents

Groundswell NW

DATED \_\_\_\_\_

CITY OF SEATTLE

By

Kevin Stoops, Director of Seattle Parks and Recreation Planning and Development

Seattle Department of Parks and Recreation

DATED \_\_\_\_\_