

**Memorandum of Understanding
Between the City of Bellevue Transportation Department
and the Bellevue School District**

This Memorandum of Understanding (MOU) is entered into this the ____ day of _____ 2018 (Effective Date), between the City of Bellevue Transportation Department (City) and the Bellevue School District (BSD or District), collectively referred to as the “Parties”.

WHEREAS, the BSD is redeveloping the Newport Heights Elementary School field (the “BSD Project”); and

WHEREAS, the Parties agree that installation of a sidewalk on the north side of SE 54th PI, between 118th Ave SE and house number 11816 SE 54th PI and that the installation of a sidewalk separated by a landscape strip on the east side of 117th Avenue SE between SE 54th Street and the Newport Heights Elementary School driveway adjacent to the BSD Project (the “Improvements”) would mutually benefit the BSD and the City by enhancing pedestrian safety for students walking to and from Newport Heights Elementary School, located at 5225 119th Avenue SE, Bellevue, WA 98006; and

WHEREAS, BSD has agreed to install the Improvements as part of the BSD Project; and

WHEREAS, the City has agreed to contribute up to \$250,000 toward the construction of such Improvements; and

WHEREAS, upon completion of the Improvements, such Improvements shall become the property of the City and the City shall be responsible for all future costs and maintenance of the sidewalk and BSD shall be responsible for all maintenance costs of the 117th Ave SE landscape strip;

NOW THEREFORE, in consideration of the mutual promises and covenants provided herein, and other consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section A: Purpose

The purpose of this MOU is to outline the roles and responsibilities of the Parties regarding ownership, funding, construction and maintenance of a concrete sidewalk on the north side of SE 54th PI, between 118th Ave SE and house number 11816 SE 54th PI and ownership, funding, construction and maintenance of a concrete sidewalk and landscaping strip on the east side of 117th Avenue SE between SE 54th St and the Newport Heights Elementary School driveway (the “Improvements”).

Section B: Project Description

BSD shall construct the Improvements in accordance with the *Design Standards and Details specified in the drawing submitted by the City to the BSD on April 2018 for SE 54th Improvements and for 117th Improvements* as outlined in the plans identified in Attachment A, attached hereto and incorporated herein.

Section C: Term and Termination

1. This MOU shall commence upon the Effective Date and remain in effect until issuance of the Certificate of Completion and satisfactory completion of the Improvements, but in any event no later than October 2019 (the "Term"). This MOU may only be extended or terminated by mutual written agreement of the Parties.
2. In the event the Improvements are not completed within the Term of this MOU, or this MOU is terminated prior to completion of the Improvements, BSD shall restore the Property to equal or better than its original condition, or to a condition satisfactory to the City.

Section D: Ownership and Operation

1. The City will maintain ownership of all the land and infrastructure during construction and upon completion of the 117th and SE 54th Improvements.
2. The Improvements shall become the property of the City upon satisfactory completion of the project and issuance of the Certificate of Completion.
3. The COB shall maintain the concrete curb, gutter and sidewalk Improvements.
4. The BSD shall maintain the greenery in the landscape strip next to 117th Ave SE Improvements.
5. The BSD understands that any records it submits to the City, or that are used by the City, even if BSD possess the records, are public records under Washington State law, RCW Chapter 42.56. BSD agrees to fully cooperate with the City in identifying and assembling records in case of any public disclosures request related to the Improvements.

Section E: City's Responsibilities

1. The City shall contribute up to a total of \$250,000 for the construction of the Improvements.
2. Upon satisfactory completion of the Improvements and issuance of the Certificate of Completion, BSD shall invoice the City for the cost of the Improvements, which amount shall not exceed \$250,000). The City shall pay such invoice within sixty (60) days of receipt of such invoice.

3. The City shall not provide site supervisor or project management in the construction of the Improvements, but will be available to inspect and answer questions. Nothing in this MOU modifies or alters the City's role as the jurisdiction with permitting and regulatory authority over construction of the Improvements.

Section F: BSD Responsibilities

1. BSD shall be responsible for all work necessary to construct the Improvements - including, but not limited to, project management, contracting, supervision, labor, equipment, and material. BSD shall construct the Improvements in accordance with the approved plans and specifications and all City codes.
2. BSD may contract for any of the work necessary to complete the Improvements. All contractors must comply with the terms of this MOU. BSD shall require any contractors or subcontractors to name the City as an additional insured on their required insurance and to indemnify and hold harmless the City in the same manner and to the same extent as BSD, including the waiver of any industrial insurance immunity. It is BSD's sole responsibility to ensure such compliance.
3. BSD shall comply with all Washington State bid and prevailing wage requirements for the procurement and construction of the Improvements.
4. BSD shall maintain insurance as set forth in Attachment C.
5. BSD shall be responsible for obtaining all required permit(s), inspections or approvals for the Improvements, and shall comply with all permit requirements and conditions.
6. BSD shall restore, repair, or replace any damage to the City's Rights of Way as a result of any construction activity.
7. As part of installation of the Improvements, BSD agrees to provide:
 - a. Services to correct any defects of the Improvements for a period of one (1) year; and
 - b. All documentation relating to the construction and operation of the Improvements upon completion of the project or termination of this MOU.
8. BSD agrees to install all landscaping in the 117th Avenue SE planter strip and shall be responsible for all on-going maintenance costs associated with the landscaping.

Section G: Hold Harmless

1. BSD shall protect, defend, indemnify, and save harmless the City, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of BSD, its officers, employees, contractors, and/or agents related to

BSD's obligations under this MOU. BSD agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of any of its employees or agents. For this purpose, BSD, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the City incurs any judgment, award, and/or cost arising therefrom including attorney's fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from BSD. Should a court of competent jurisdiction determine that this MOU is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Parties or their officers, directors, employees, agents, representatives and volunteers, BSD's liability, including the duty and cost to defend, hereunder shall be only to the extent of BSD's negligence. The provisions of this section shall survive the expiration or termination of this MOU.

2. The City shall protect, defend, indemnify and save harmless BSD, its officers, employees and agents from any and all costs, claims, judgments and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City, its officers, employees and agents related to the City's obligations under this MOU. The City agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the City, by mutual negotiation, hereby waives, as respects of BSD only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that BSD incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the City. Should a court of competent jurisdiction determine that this MOU is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Parties or their officers, directors, employees, agents, representatives and volunteers, the City's liability, including the duty and cost to defend, hereunder shall be only to the extent of the City's negligence. The provisions of this section shall survive the expiration or termination of this MOU.

Section H: Compliance with Laws

BSD shall comply with all federal, state and local laws and regulations applicable to the work to be done under this MOU, including but not limited to not discriminating against any employee or applicant for employment or any other persons in the performance of this MOU because of race, religion, creed, color, national origin, marital status, gender, age or handicap, or other circumstances as may be defined by federal, state or local law or ordinance, except for a bona fide occupational qualification. BSD agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by BSD setting forth the provisions of this nondiscrimination clause.

Section I: General Provisions

1. **Governing Law; Forum.** The MOU will be governed by the laws of Washington and its choice of law rules. BSD irrevocably consents to the exclusive personal jurisdiction and venue of the federal and state courts located in King County, Washington, with respect to any dispute arising out of or in connection with the MOU, and agrees not to commence or prosecute any action or proceeding arising out of or in connection with the MOU other than in the aforementioned courts.
2. **Severability.** If any provision of the MOU is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The City and BSD agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
3. **Non-waiver.** Any failure by the City to enforce strict performance of any provision of this MOU will not constitute a waiver of the City's right to subsequently enforce such provision or any other provision of this MOU.
4. **No Assignment.** Neither the MOU nor any of the rights or obligations of BSD arising under the MOU may be assigned, without the City's prior written consent. Subject to the foregoing, the MOU will be binding upon, enforceable by, and inure to the benefit of, the parties and their successors and assigns.
5. **Notices.** All notices and other communications under the MOU must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address set forth below:

The City: Rebecca Rodni
Neighborhood Services Project Manager
P.O. Box 90012
450 110th Avenue NE
Bellevue, WA 98004


BSD: Jack McLeod, Director
Facilities and Operations
Bellevue School District
12111 NE 1st Street
Bellevue, WA 98005

Any party may change its address specified in this paragraph by giving the other written notice in accordance with this paragraph.

6. **Legal Fees.** In any lawsuit between the parties with respect to the matters covered by the MOU, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in the lawsuit, in addition to any other relief it may be awarded.

7. Amendments. No modification or amendment of this MOU may be made except by written agreement signed by both Parties.
8. Counterparts. The MOU may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document.

By: _____
Mark Poch, Assistant Director
Transportation Department
City of Bellevue
Date: _____

By:  _____
Jack McLeod, Director
Facilities and Operations
Bellevue School District
Date: 28-JUN-18

Approved as to form:

Monica Buck, Assistant City Attorney

Date: _____

Attachments:

Attachment A – Newport Heights Frontage Improvements Plans

Attachment B – SE 54th PI Sidewalk Plans

Attachment C – Insurance Requirements

Attachment A

117th Ave SE Sidewalk Plans

Attachment B

SE 54th PI Sidewalk Conceptual Plans

ATTACHMENT C INSURANCE REQUIREMENTS

The District shall procure and maintain for the duration of this MOU insurance against claims for injuries to persons or damages to property which may arise from or in connection with the access and use hereunder by the District, its agents, representatives, employees, contractors or subcontractors. The cost of such insurance shall be paid by the District. Insurance shall meet or exceed the following unless otherwise approved by the City.

A. Minimum Insurance

1. Commercial General Liability coverage with limits not less than \$1,000,000 per occurrence / \$2,000,000 annual aggregate,
2. Stop Gap/Employers Liability coverage with limits not less than \$1,000,000 per accident/disease,
3. Business Automobile Liability coverage with limits not less than \$1,000,000 per accident for any auto,
4. Workers' Compensation coverage as required by the industrial Insurance Laws of the State of Washington.

B. Self-Insured Retentions:

Self-Insured retentions must be declared to and approved by the City

C. Other Provisions

Commercial General Liability policies shall be endorsed to:

1. Include the City, its officials, employees and volunteers as additional insureds,
2. Provide that such insurance shall be primary as respects any insurance or self-insurance maintained by the City,
3. Provide that coverage shall not be canceled except after thirty (30) days written notice has been given to the City.

D. Acceptability of Insurers

Insurance shall be placed with insurers with a rating acceptable to the City

E. Verification of Coverage

The District shall furnish the City with certificates of insurance required by this clause. The certificates are to be received and approved by the City before access and use commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. Subcontractors

The District shall require contractors and subcontractors to provide coverage which complies with the requirements stated herein.