

**A M E N D M E N T   N U M B E R   2**  
t o  
**A I R S P A C E   L E A S E**

THIS AMENDMENT NUMBER 2 (Amendment) to that certain Airspace Lease entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (Lessor) and CITY OF MERCER ISLAND (Lessee), executed by Lessor on March 11, 1994, and as further designated by Lessor as Airspace Lease AA-01-10221, I.C. No. 1-17-05512, as modified by Mercer Island Boat Launch Addendum to Airspace Lease, executed by Lessor on March 11, 1994, and Amendment No. 1 dated November 15, 2017 (collectively, Lease), is entered into by and between Lessor, and Lessee, a municipal corporation of the state of Washington.

**RECITALS**

A. The Lease authorizes the parties to amend the Lease by written agreement signed by both parties.

B. King County will be performing construction activities as part of the North Mercer Enatai Interceptor Sewer Project (Project) that requires the temporary use of a portion of the Premises for construction staging activities. Lessee has requested to sublease a portion of the Premises to King County for these activities. King County anticipates its use of a portion of the Premises will last approximately twenty-four (24) months.

C. The Lessor and Lessee believe it is in the interest of the public to allow Lessee to sublease a portion of the Premises to King County for approximately twenty-four (24) months for the purposes of the Project.

D. Lessor and Lessee desire to amend the Lease to allow for sublease of portions of the Premise under the terms and conditions set forth below.

**AGREEMENT**

NOW, THEREFORE in consideration of the terms and conditions herein, the Lease is modified as follows:

1. All capitalized terms used herein but not defined herein have the respective meanings set forth in the Lease or, if not defined in the Lease, have their ordinary and usual meaning. All

Section and Exhibit references herein, if any, are to the Sections and Exhibits of the Lease unless otherwise stated.

2. **SUBLET** is being replaced in its entirety with the following:

**SUBLET.** Lessee may sublet the operation of the boat launch, identified on to another public agency after giving ninety (90) days written notice to Lessor and securing Lessor's written concurrence. In addition, Lessee may sublet to King County a portion of the boat launch parking area and the grassy area to King County for the purpose of staging for the Project following conditions herein.

The sublease between ~~Lessor~~ Lessee and King County shall commence on the first day of the month following Lessor's written notification to Lessee and shall terminate at such time as King County has notified Lessor in writing that the Premises is no longer needed for the Project (Sublease Period). At such time, Lessor shall notify the Lessee in writing of the termination of the sublease.

3. Upon termination of the King County sublease, **SUBLET** shall revert to the original lease language.

4. **RENT** is being replaced in its entirety with the following:

**RENT.**

A. The Lessor and Lessee covenant and agree that consideration for this lease for Lessee's use is as set forth in that certain agreement by and between the parties hereto dated July 27, 1987, called "I-90 Turnback and Landscape Agreement" a copy of which is attached hereto as **EXHIBIT B**.

B. During the term of the King County sublease, Lessee shall collect rent from King County for the twenty-four (24) month period shall be SEVEN HUNDRED TWO THOUSAND TWO HUNDRED SEVENTY-NINE and 90/100 DOLLARS (\$702,279.90). Lessee shall forward to Lessor the balance of rent collected after the following instructions in the Use of Premises section of the lease as identified in USE OF PREMISES of this Amendment.

C. In the event that this Lease extends beyond the initial prepaid twenty-four (24) months, TENANT covenants and agrees to pay rent for the Premises to WSDOT in advance on or before the first day of each and every month thereafter following the expiration of the twenty-four (24) month period described in **Section 4.A**. Rent shall be paid at the monthly rate of TWENTY-NINE THOUSAND TWO HUNDRED SIXTY-ONE and 66/100 Dollars (\$29,261.66).

D. The terms of the sublease between Lessee and King County shall (1) require King County to prepay rent in one lump sum for the expected twenty-four (24) months term of the sublease, and (2) provide that King County shall not be entitled to a refund of prepaid rent if the sublease term is less than twenty-four (24) months, and (3) that King County shall pay prorated rent at the rental rate set herein for each month the sublease extends beyond the original twenty-four (24) month term and prepaid rent payment.

5. Upon termination of the King County sublease, **RENT** shall revert to the original lease language.

6. **USE OF PREMISES** is being replaced in its entirety with the following:

### **USE OF PREMISES**

No other use than operating a public boat ramp, approved concessions, and King County staging activities for the Project shall be permitted without the prior written approval of the Lessor. The approved concessions are: food concession, canoe rental, and sailboard rental. If Lessee elects to operate any concessions on the leased premises, ten (10) percent of the gross receipts of such concession will be paid to Lessor annually on October 1<sup>st</sup> of each year. If any concession is operated under this lease, Lessee shall be responsible for collection and payment to Lessor of the monies due. If Lessee elects to charge a permit or use fee for use of the facility to any individual or group of individuals, then ten percent (10%) of these fees will be paid to Lessor annually on October 1<sup>st</sup> of each year. In using the premises, the Lessee shall comply with all policies and regulations heretofore or hereafter promulgated by the Department of Transportation relative to the location, operation and maintenance of improvements located on the leased premises. Direct access to ramps or traveled lanes of the limited access highway is not permitted. All grading and construction plans and any changes thereof are subject to approval by the Lessor.

Lessee shall continue payment to Lessor on October 1<sup>st</sup> of each calendar year the sublease is in effect, using the following guidelines:

1. Prior to the commencement of the sublease, Lessee shall continue to pay 10% of gross receipts. Lessee shall provide documentation showing gross revenue and calculation for the payment.

2. Upon commencement of the sublease, Lessee is authorized to retain from rent collected from King County under the sublease, an annual rate of eight percent (8%), or FIFTY-SIX THOUSAND, ONE HUNDRED EIGHT-TWO and 39/100 DOLLARS (\$56,182.39) for the purpose of lease oversight. Additionally, Lessee will not be required to pay the ten percent (10%) gross receipt revenue during the sublease term. This rental rate shall be prorated based on

the commencement date of the sublease and the annual payment cycle of October 1 through September 30.

3. Upon termination of the sublease, Lessee shall revert to paying the ten percent (10%) fee, based on the termination date of the sublease.

4. With each annual October payment, Lessee shall provide documentation showing gross receipt payment calculation and prorate oversight calculation for King County rent oversight fee.

5. Lessee shall forward to Lessor the King County rental payment, less the annual eight percent (8%) oversight fee, prorated as necessary, no later than termination of the King County sublease. The payment shall include the Lessor's lease number AA-01-10221 and the calculations for all payments during the sublease period including gross revenue and lease oversight payments. Payment shall be mailed to:

Department of Transportation  
Attn: Property Management Program Manager  
P.O. Box 47339  
Olympia, WA 98504-7339

Furthermore, in using the leased premises, it is expressly agreed that the Lessee must comply with all applicable Federal, State and Local ordinances and regulations including environmental requirements and secure all necessary permits and licenses. Lessee hereby agrees to hold Lessor harmless from claims or suits resulting from Lessee's failure to comply with such requirements.

7. **USE OF RIGHT OF WAY UNDER OR ADJACENT TO STRUCTURE** is being replaced in its entirety with the following:

**USE OF RIGHT OF WAY UNDER OR ADJACENT TO STRUCTURE.**

The Lessee agrees to take reasonable steps to protect against vehicular hits or other damage arising from Lessee's use of the premises, to all piers and structures exposed to such potential damage under any elevated highway structure existing on the site.

The Lessee shall not weld any metal object to any metal member of any metal structure, or drill or rivet into or otherwise fasten anything to any pier or beam on any concrete, metal, or wood structures without the Lessor's specific written approval of detailed drawings for such welding, riveting, drilling, or fastening.

The Lessee shall at its own expense make any provisions it deems necessary to protect users of its facility from any hazards resulting from use and operation of the highway.

The Lessee is responsible for the cost of repair for any and all damage to the highway structure related to the Washington State Department of Transportation owned improvements, as a result of operation of the boat launch facility, except where such damage is caused by or results from operations of WSDOT, other state agencies, or state franchise or permit holders.

In using the Premises, Lessee shall comply with the following restrictions for the protection of the SR 90 bridge structure. A diagram showing details of the following is attached as **EXHIBIT C**, attached hereto and by this reference incorporated herein:

1. Provide Staging plans indicating staged materials locations, type and estimated quantity or volume, access roads within staging areas, gate locations, access points and current contact information for site managers. **NO STORAGE OF FLAMMABLE MATERIAL, INCLUDING HDPE PIPE, IS PERMITTED UNDER THE BRIDGE STRUCTURE.** Staging of small quantities may be permitted provided pipes are not accumulating more than the quantity that can be installed in two (2) to three (3) days and the pipe is laid out and not stacked. Lessee shall provide staging plans to Lessor in writing by email to [NWRRESPM@WSDOT.WA.GOV](mailto:NWRRESPM@WSDOT.WA.GOV) for review and approval. Staging plans must be approved by Lessor prior to materials being placed on the Premises. Any changes to staging plans and activities must be preapproved by Lessor using this review process.

2. Maintain twenty (20) feet Vertical Clearances to underside of all bridge elements. May be reduced to ten (10) feet minimum dependent on location and situation with prior approval after review of the staging plan above.

3. Provide for at least twenty (20) feet Horizontal Clearance on at least one side, or at the face, of bridge elements such as piers and abutments for inspection vehicle access, and at least five (5) feet of clearance around all other faces for inspection.

4. Maintain or be able to allow vehicle access to bridge element locations such as piers and abutment faces.

5. Pier protection such as traffic barriers, should be placed at the base of free-standing pier locations to prevent equipment or vehicular impact.

6. For pier locations that are adjacent to construction vehicle/equipment access roads, pier protection such as traffic barriers, must be placed at base of free-standing pier locations to prevent impact. Access roads at these locations should be at least twenty (20) feet wide to provide for passage. This will also satisfy the horizontal clearance for inspection access as described in 2. above.

7. Locks to all gated areas under and around bridge areas must be daisy chained for 24/7 access by Lessor.

8. **USE OF RIGHT OF WAY UNDER OR ADJACENT TO STRUCTURE** shall survive the term of the King County sublease to replace the original lease language.

9. The terms of the sublease between Lessee and King County shall require King County to comply with all terms and conditions of the Airspace Lease between Lessor and Lessee and all amendments thereto and provide that King County's failure to comply with such terms and conditions shall constitute a default under the sublease and this Lease Amendment 3.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties have caused this Amendment No. 2 to be effective as of the last date written below.

Signatures:

Accepted and Approved by:

CITY OF MERCER ISLAND

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Jessi Bon  
City Manager, City of Mercer Island

By: \_\_\_\_\_  
Michael Cotten  
Regional Administrator, Northwest Region

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO FORM

By: \_\_\_\_\_  
Attorney, City of Mercer Island

By: \_\_\_\_\_  
Assistant Attorney General

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

TENANT ACKNOWLEDGMENT

STATE OF WASHINGTON )

) ss

COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_ before me personally appeared Jessi Bon to me known to be the duly appointed and qualified City Manager of the city of Mercer Island, Washington, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and each on oath stated that she was authorized to execute said instrument by motion of the Mercer Island City Council, and that the seal affixed is the official seal of said City.

GIVEN under my hand and official seal the day and year last above written.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Notary Public in and for the State of  
Washington

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_



WSDOT ACKNOWLEDGMENT

STATE OF WASHINGTON )

) ss

COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally appeared Michael Cotten, to me known to be the duly appointed Regional Administrator, Northwest Region, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Notary Public in and for the State of Washington

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

I-90 TURNBACK AND LANDSCAPE AGREEMENT

PHASE TWO - EAST CHANNEL BOAT LAUNCH FACILITY

THIS AGREEMENT is entered into between the Washington State Department of Transportation, hereinafter "WSDOT" and the City of Mercer Island, Washington, hereinafter "the City". The Agreement pertains to a boat launch and water access facility to be located under, adjacent to, and in the vicinity of the I-90 East Channel structure.

It is agreed between WSDOT and the City as follows:

1. Use and development of the area shown on Exhibit 1 hereto for a boat launch and water access facility with erosion control and landscaping of said facility and adjacent properties is in the best interests of the public; and
2. Both WSDOT and the City will participate in the development of the boat launch facility with the City assuming final management, jurisdiction, and maintenance responsibility for the facility via a mutual benefits no cost air space lease arrangement, with reservation of necessary and appropriate access and utility easements, permits and franchises; and
3. WSDOT agrees to make certain site improvements in accordance with the design report for the boat launch site (Exhibit 2 hereto) and FHWA approval for use of Federal funds for said purposes. Such improvements include:
  - a) Grading of the area to be used for the boat launch facility as presently contained in the I-90 East Mercer Interchange Phase Two Construction Contract.
  - b) Clearing, final grading, surfacing and paving of the access road and parking area in accordance with the boat launch plans which are attached as Exhibit 2 hereto as part of State contract or contracts. Those items included in Exhibit 2 which are the responsibility of the City may be included in an appropriate State contract at the option of the City.
  - c) Installation of underground permanent and temporary/establishment irrigation systems for the total facility area as shown in Exhibit 1.

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- d) Landscaping and erosion control of the area immediately surrounding the paved boat launch facility generally in accordance with Exhibit 2 and for the remainder of the area generally in accordance with Exhibit 3 hereto. Landscaping and erosion control may be done under a separate contract.
- e) WSDOT will complete the boat launch facility plans and furnish them to the City for final development and maintenance of the boat launch facility, except as set forth in paragraph four below.

4. The City agrees to assume responsibility for design and development of the boat launch facility and water access facility items on the site including landscaping adjacent thereto not contained in Exhibit 2.

5. The City agrees to assume full management and maintenance responsibility for the total facility area as identified in Exhibit 1 including landscaping, at no additional future cost to WSDOT or the FHWA. Management and maintenance responsibility by the City shall commence after the plant establishment period (3 years after completion of landscaping) or when WSDOT no longer has construction-related need for the area, whichever is later. If the City begins to use the boat launch facility area prior to completion of the plant establishment period for the area shown on Exhibit 2, City maintenance responsibility will be negotiated between WSDOT and the City at that time for the portions occupied by the City.

6. WSDOT agrees to assume full maintenance responsibility for the drainage siltation facility located within the boat launch facility area including both inlet and outfall piping and East Channel Bridge structural elements and retaining walls.

7. WSDOT agrees to enter into a mutual benefits no cost air space lease arrangement with the City as part of the turnback and landscape negotiations involved in Phase III dealing with the First Hill Lid and surrounding area.

8. It is agreed that the City will have the opportunity to review the final landscape plans, specifications and estimate (PS&E) for each project during District Office review and during office copy review after the PS&E has been reviewed by headquarters in Olympia and prepared in final form, approximately two weeks prior to advertisement for bid.

9. It is understood and agreed that both parties to this agreement have authority to sign this agreement and it shall be binding on both parties unless modified or terminated by mutual agreement in writing.

DATED this 27<sup>th</sup> day of July, 1987.

WSDOT

By: 

Brian P. Henkel, P.E.  
I-90 Project Manager

CITY OF MERCER ISLAND

By: 

Ronald C. Dickinson  
City Attorney

NO STORAGE OF FLAMMABLE MATERIAL

**EXHIBIT C**  
Lease AA-01-10221  
ICN 01-17-05512  
City of Mercer Island  
Sheet 1 of 1

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PROVIDE STAGING PLAN AS DESCRIBED IN LEASE LANGUAGE,

BULLETS AS DESCRIBED IN LEASE LANGUAGE ILLUSTRATED BELOW.

PROVIDE 24/7 ACCESS TO LOCKED AREAS BY LEASE LANGUAGE

MAY BE REDUCED TO 10' BASED ON LOCATION AND SITUATION

