

MERCER ISLAND BOAT LAUNCH
SUBLEASE AGREEMENT

THIS SUBLEASE ("Sublease") is made this ____ day of _____, 2021, between the CITY OF MERCER ISLAND, a Washington Municipal Corporation of the State of Washington ("City" or "Lessee"), and KING COUNTY, a County of the State of Washington ("County" or "Sublessee") (hereinafter collectively referred to as "the Parties").

RECITALS

A. Lessee is the tenant under that certain Airspace Lease Agreement (IC# 1-17-05512/AA-1-10221) and modified by Mercer Island Boat Launch Addendum to Airspace Lease (collectively, the "Airspace Lease") executed by WASHINGTON STATE DEPARTMENT OF TRANSPORTATION ("WSDOT") as lessor ("Lessor") on March 11, 1994, and further amended by Amendment No. 1 Airspace Lease Agreement dated November 15, 2017 (hereinafter collectively referred to as "Master Lease", shown as Exhibit A) for Lessee's use of the premises commonly known as the Mercer Island Boat Launch, which area and vicinity is shown on Exhibit B ("Master Premises").

B. Lessee owns and operates certain improvements within the Master Premises for recreational purposes. These improvements were made with grants from and under agreements with the Washington State Interagency Committee on Outdoor Recreation, predecessor to the current Recreation and Conservation Office (RCO). The grant agreements with RCO and subsequent RCO policies provide for situations where the improvements may be used for non-recreational purposes.

C. WSDOT requires fair market rent be collected for the non-transportation lease of interstate right-of-way. The collecting agency must forward all such proceeds to WSDOT. The collecting agency may deduct reasonable oversight costs and other costs as approved by WSDOT.

D. Sublessee's North Mercer Enatai Interceptor Sewer Project (the "Project") requires use of the Master Premises previously leased to the Lessee under the Master Lease. WSDOT and Lessee will enter into an Amendment Number 2 to Master Lease in order to allow Lessee's sublease of the Master Premises until such time that Sublessee's construction of the Project on the Master Premises is complete.

E. Sublessee desires to sublease from Lessee a portion of the Master Premises during Sublessee's construction of the Project for construction staging with the intent to allow the Mercer Island Boat Launch to remain operational and open to the public during construction of the Project.

F. Lessee is willing to sublease to Sublessee a portion of the Master Premises, subject to Lessor's approval, pursuant to the contemplated Amendment Number 2 of the Master Lease and RCO policy.

AGREEMENT

In consideration of the covenants and promises contained in this Sublease and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Premises. Lessee agrees to sublease to Sublessee, and Sublessee agrees to sublease from Lessee, that portion of the Master Premises shown on Exhibit C (the "Premises").

2. Term. This Sublease shall commence the first day of the month following Lessee's written commencement notification to Lessor, (the "Commencement Date") and terminating two years from the date of occupation or on the date that Lessee's construction of the Project on the Master Premises is complete, whichever is sooner, (the "Termination Date") unless sooner terminated or extended as provided for herein. The Sublessee will provide the Lessee written notice of the date of occupation at least 15 calendar days prior to said date.

The Sublessee shall not mobilize onto the Premises prior to the Commencement Date. The Sublessee must fully demobilize from the Premises by the Termination Date and return the Site to the condition in which it existed at the commencement of Sublessee's use of the Premises or better as more fully described in Exhibit D. The Sublessee shall notify the Lessee within fourteen days of demobilization.

3. Condition of Premises. Sublessee has thoroughly inspected the Premises and accepts them in their present condition, AS IS WITH ALL FAULTS. Sublessee acknowledges that neither Lessor, Lessee, nor any agent thereof has made any representation as to the condition of the Premises or their suitability for Sublessee's intended uses. Sublessee and Lessee expressly agree that there are and shall be no implied warranties of merchantability, habitability, fitness of a particular purpose, or any other kind arising out of this Sublease, and there are no warranties that extend beyond those expressly set forth in this Sublease.

4. Maintenance, Repairs, and Services.

4.1 Maintenance of Premises. Sublessee shall, at its expense, clean and maintain the Premises, including, without limitation, all improvements to the Premises, in good order, condition, and repair, excepting only reasonable wear and tear.

4.2 Repairs of Premises. Sublessee shall pay for any repairs conducted on the Premises to the extent the damage was caused by Sublessee or any employee, guest, invitee, or agent of Sublessee, except Sublessee shall not be liable to pay for any damage to the Premises caused by third parties, including members of the general public, other than as expressly set forth in the Master Lease. Lessee shall pay for any repairs conducted on the Premises if the damage was caused by Lessee or an employee or agent of Lessee. Sublessee shall promptly notify Lessee of any condition in the Premises that creates a need for repair.

4.3 Coordination. Sublessee shall notify and coordinate with the City's Capital Project and Planning Manager, Paul West (206.275.7833), or his designee as he may indicate from time to time, at least two (2) weeks prior to performing any maintenance or repair on the Premises.

4.4 Lessee's Services. Sublessee shall have no obligation to furnish any services of any nature whatsoever to the Premises; however, Sublessee shall not disrupt or cause such services to fail. Lessee is responsible for and agrees to pay for its use of all utilities that serve the Premises; however, Lessee is not responsible to pay for utilities in connection with the Project undertaken by Sublessee, which utility expenses shall be Sublessee's sole responsibility.

5. Use.

5.1 Permitted Uses. Sublessee shall only use the Premises as a construction staging area including equipment and materials storage.

5.2 Prohibited Uses. Sublessee shall not use or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose; shall not cause, maintain, or permit any nuisance in, on, or about the Premises; and shall not commit or suffer to be committed any waste in or about the Premises. Sublessee shall comply with all applicable federal, state, and local laws, ordinances, and regulations pertaining to its use of the Premises.

5.3 Alterations. Sublessee shall not make any alterations to the Premises during the Term.

5.4 Non-Exclusive Right: This Sublease shall not be deemed or construed to be an exclusive right. It does not prohibit the Lessor or Lessee from granting any other permits or subleases to other public or private entities, nor shall it prevent the Lessor or Lessee from using any public place for any and all public use as long as such uses do not interfere with the rights granted herein to the Sublessee. This Sublease shall further not affect Lessor's or Lessee's existing jurisdiction over any applicable public place.

USE OF RIGHT OF WAY UNDER OR ADJACENT TO STRUCTURE.

The Sublessee agrees to take reasonable steps to protect against vehicular hits or other damage arising from Sublessee'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 Sublessee 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 Sublessee 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 Sublessee 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 Lessor, other state agencies, or state franchise or permit holders.

In using the Premises, Sublessee 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 E**, 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 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.

6. Airspace Lease. Sublessee shall comply with all terms and conditions of the Airspace Lease with Lessor's governing Sublessee's use of the Premises, including without limitation the provisions contained in the paragraphs entitled "Hazardous Materials," "Use of Right of Way Under or Adjacent to Structure," "Taxes, Assessments and Utilities," "Lessor's Approval of Design and Construction," "Lessor's Right of Entry and Inspection," "Insurance," "Hold Harmless/Indemnification Clause," and "Non-Discrimination." All such terms and conditions are made a part of this Sublease and incorporated herein by this reference, and any failure by Sublessee to comply with such terms and conditions shall constitute a default under this Sublease. Provided, however, that in the event of a conflict between the Airspace Lease and this Sublease, the terms of this Sublease shall govern.

7. Master Lease.

7.1 Good Standing. Lessee represents and warrants that the Master Lease is in good standing.

7.2 Subordination. This Sublease is subject and subordinate to the Master Lease and to any and all renewals, modifications, consolidations, replacements, and extensions thereof.

7.3 Adherence to Terms of Master Lease. Sublessee shall comply with all terms and conditions of the Master Lease, including without limitation the provisions contained in the paragraphs entitled "Hazardous Materials," "Use of Right of Way Under or Adjacent to Structure," "Taxes, Assessments and Utilities," "Lessor's Approval of Design and Construction," "Lessor's Right of Entry and Inspection," "Insurance," "Hold Harmless/Indemnification Clause," and "Non-Discrimination." All such terms and conditions are made a part of this Sublease and incorporated herein by this reference, and any failure by Sublessee to comply with such terms and conditions shall constitute a default under this Sublease. Provided, however, that in the event of a conflict between the Master Lease and this Sublease, the terms of this Sublease shall govern. Sublessee shall neither do nor permit anything to be done that would cause the Master Lease to be terminated or forfeited by reason of any right of termination or forfeiture reserved or vested in Lessor under the Master Lease, or that would constitute or result in a violation of any nature whatsoever of Lessee's obligations under the Master Lease. Any act or omission by Sublessee that results in a violation of Lessee's obligations under the Master Lease shall constitute a default under this Sublease.

8. Environmental.

8.1 Neither Sublessee nor its officers, directors, agents, contractors, employees, or invitees will use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Premises, or off-site the Premises affecting the Premises, or transport to or from the Premises, any Hazardous Substance, except in compliance with Environmental Laws. The term "Hazardous Substance" means any hazardous or toxic substance, material or waste, pollutants or contaminants, as defined, listed, or regulated now or in the future by any federal, state or local law, ordinance, code, regulation, rule, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any environmental conditions, health or industrial hygiene, including without limitation: (i) chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos, and (iv) polychlorinated biphenyls. The term "Environmental Law" means any federal, state or local law, statute, ordinance, regulation, or order pertaining to health, industrial hygiene, environmental conditions or hazardous substances or materials including those defined in this Article as "Hazardous Substances."

8.2 Sublessee shall give prompt written notice to Lessee and Lessor of: any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Premises; all claims made or threatened by any third party against Sublessee or the Premises relating to any loss or injury resulting from any Hazardous Substance; and Sublessee's discovery of any occurrence or condition on the Premises that could cause the Premises or any part thereof to be subject to any restrictions on occupancy, or use of the Premises under any Environmental Law.

8.3 Sublessee shall protect, indemnify, defend, and hold harmless Lessee and Lessor and their directors, partners, officers, employees, agents, parents, subsidiaries, successors, and assigns from any loss, damage, cost, expense, or liability (including reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, discharge, disposal, or presence of

a Hazardous Substance on the Premises or off-site of the Premises affecting the Premises caused by Sublessee or its directors, partners, officers, employees, agents, contractors, and invitees, including without limitation, the costs of any required or necessary repairs, cleanup, or detoxification of the Premises and the preparation and implementation of any closure, remedial, or other required plans.

9. Mitigation of Project Impacts.

9.1 The Parties understand and agree that the Project may from time to time have certain temporary impacts on Lessee's use and enjoyment of the Premises. During the Term of this Sublease Agreement, Sublessee agrees to employ the mitigation measures outlined on Exhibit D hereto in order to reasonably reduce the impacts of the Project. Additionally, Sublessee shall not unreasonably interfere with Lessee's Marine Patrol operations on the Premises.

9.2 As referenced in Exhibit D, Sublessee will pay the Lessee a fair market value for the use of the Premises in one lump sum payment in the amount of SEVEN HUNDRED TWO THOUSAND TWO HUNDRED SEVENTY-NINE and 90/100 DOLLARS (\$702,279.90). Under the terms of the contemplated Amendment 2 of the Master Lease, the Lessee will forward all such revenue to the Lessor, minus reasonable costs for lease administration and lost parking revenue as a result of Sublessee's occupation of the Master Premises, consistent with Exhibit D. Sublessee shall submit the lease payment within 30 days of the Commencement Date and its subsequent anniversary. Sublessee shall not be entitled to a refund of prepaid rent if the sublease terminates prior to the twenty-four (24) month period. Sublessee shall pay a monthly prorated rent based on the rent set herein, for each month the sublease extends past the original twenty-four (24) month term. The payment must include the appropriate memo of lease payment with reference to this agreement. Lessee shall submit its payment electronically to:

LaJuan Tuttle

Deputy Finance Director, City of Mercer Island

Lajuan.tuttle@mercerisland.gov

Tel: (206)275-7785

Invoices are payable thirty (30) days upon Sublessee's receipt of the invoice.

10. Default. Any of the following occurrences shall constitute defaults by Lessee:

- a. Lessee's failure to maintain in force or pay the premium for any policy of insurance required to be obtained or maintained by Lessee pursuant to this Sublease;
- b. Any default by Lessee of its obligations under Paragraph 4.2 (Repairs of Premises); 4.4 (Lessee's Services); Paragraph 7.1 (Good Standing); or Paragraph 15 (Indemnification); or
- c. Lessee's failure to observe and perform any other provision, term, or condition in this Sublease within thirty (30) days after Sublessee delivers written notice of the failure to Lessee (the "Cure Period"); or, if the cure cannot reasonably be concluded within the Cure Period, Lessee's failure to commence to cure the

failure within the Cure Period and thereafter proceed diligently to complete the cure.

Any of the following occurrences shall constitute defaults by the Sublessee:

- a. Sublessee's failure to maintain in force or pay the premium for any policy of insurance required to be obtained or maintained by Sublessee pursuant to this Sublease;
- b. Any default by Sublessee of its obligations under Paragraph 16 (Indemnification); or
- c. Sublessee's failure to observe and perform any other provision, term or condition in this Sublease within thirty (30) days after the Lessor or Lessee delivers written notice of the failure to Sublessee (the "Cure Period"), including without limitation the payment obligation set forth in Paragraph 9.2 of this Sublease and Sublessee's obligation to maintain public access to the boat launch, including access for Marine Patrol operations, throughout the duration of the Project; or, if the cure cannot reasonably be concluded within the Cure Period, Sublessee's failure to commence to cure the failure within the Cure Period and thereafter proceed diligently to complete the cure.

11. Remedies. In the event of a default, the Parties may terminate this Sublease, in addition to all other legal or equitable remedies, by delivering written notice of termination to the defaulting Party after any applicable Cure Period. Should Sublessee receive a notice of termination, it shall remove its equipment, vehicles, personnel, and any other property and shall vacate the Premises within 30 days of receiving a written notice of termination under this Section.

12. Liability. Sublessee shall be liable for any damages to the Lessee's personal property arising from Sublessee's Project activities conducted on or about the Premises. Lessee shall be liable for any damage to Sublessee's personal property or improvements arising from Lessee's or its agents', employees', or contractors' use of, or activities on, the Premises; provided, however, that Lessee shall not be liable for any damage to Sublessee's personal property caused solely by any other third parties, including members of the general public.

13. Insurance.

a. Insurance Term

The Sublessee shall procure and maintain for the duration of the Sublease and for thirty (30) days thereafter insurance or self-insurance against claims for injuries to persons or damage to property which may arise from or in connection with the License and use of the Licensed Area.

b. No Limitation

The Sublessee's maintenance of insurance or self-insurance as required by this Sublease shall not be construed to limit the liability of the Lessee or Lessor to the coverage provided by such insurance or self-insurance, or otherwise limit the Lessee's or Lessor's recourse to any remedy available at law or in equity.

c. Minimum Scope of Insurance

The Sublessee shall obtain or cause its Contractor(s) and Subcontractor(s) to obtain insurance of the types and coverage described below:

Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Lessee and Lessor shall be named as an additional insured under the Sublessee's Commercial General Liability insurance policy with respect this Sublease using ISO endorsement CG 20 26 07 04, or substitute endorsement providing at least as broad coverage.

Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

Contractors Pollution Liability insurance shall be in effect throughout the entire Sublease covering losses caused by pollution conditions that arise from the operations of the Sublessee. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Sublessee's Commercial General Liability and Automobile Liability insurance. The Lessee and Lessor shall be named as an additional insured on the Sublessee's Excess or Umbrella Liability insurance policy.

d. Minimum Amounts of Insurance

The Sublessee shall maintain the following insurance limits (whether through self-insurance or commercially available insurance):

Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Sublessee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

e. Other Insurance Provisions

Sublessee's Contractors' and Subcontractors' Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, and Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the Lessee and Lessor. Any insurance, self-insurance, or self-insured pool coverage maintained by the Lessee or Lessor shall be excess of the Sublessee's insurance and shall not contribute with it. Sublessee maintains a fully funded Self-Insurance program for the protection and handling of its liabilities including injuries to persons and damage to property. Sublessee does not purchase Commercial General Liability, Auto Liability, or Pollution Liability insurance and is a self-insured governmental entity; therefore, Sublessee does not have insurance policies by which to stipulate they shall be primary insurance as respect the Lessee and Lessor.

f. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

g. Verification of Coverage

The Sublessee shall furnish the Lessee and Lessor with original certificates and a copy of the amendatory endorsements annually, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of this Sublease. Upon request by the Lessee or Lessor, the Sublessee shall furnish certified copies of all required insurance policies, including endorsements, required in this Sublease and evidence of all subcontractors' coverage.

h. Contractors and Subcontractors

The Sublessee shall cause each and every Contractor and Subcontractor to provide insurance coverage that complies with all applicable requirements of the Sublessee-provided insurance as set forth herein, except the Sublessee shall have sole responsibility for determining the limits of coverage required to be obtained by Contractors and Subcontractors. The Sublessee shall ensure that the Lessee and the Lessor are additional insureds on each and every Contractor's and/or Subcontractor's Commercial General liability insurance policy using a commercially acceptable endorsement that is acceptable to the insurers of Lessee and Lessor.

i. Notice of Cancellation

Sublessee shall provide the Lessee and Lessor with written notice of any policy cancellation within thirty (30) days of their receipt of such notice but in no event after the effective date of such policy cancellation.

j. Failure to Maintain Insurance

Failure on the part of the Sublessee to maintain the insurance as required shall constitute a material breach of this Sublease, upon which the Lessee and Lessor may, after giving five business days' notice to the Sublessee to correct the breach, terminate this Sublease or, at Lessee's discretion, procure, or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Lessee at Sublessee's sole expense.

k. Lessor and Lessee Full Availability of Sublessee Limits

If the Sublessee maintains higher insurance limits than the minimums shown above, the Lessee and Lessor shall be insured for the full available limits of Commercial General and Excess or Umbrella liability or self-insurance maintained by the Sublessee, irrespective of whether such limits maintained by the Sublessee are greater than those required by this Sublease or whether any certificate of insurance furnished to the Lessee or Lessor evidences limits of liability lower than those maintained by the Sublessee.

L. Sublessee – Self-Insurance

Sublessee maintains a fully funded Self-Insurance program for the protection and handling of its liabilities including injuries to persons and damage to property. Sublessee does not purchase Commercial General Liability, Auto Liability, or Pollution Liability insurance and is a self-insured governmental entity; therefore, Sublessee does not have the ability to name an entity as an additional insured. Sublessee is responsible for all payments within its self-insured retention; and Sublessee assumes all defense and indemnity obligations as outlined in the indemnification section of this Sublease.

M. Duration of Coverage

Sublessee shall maintain in full force and effect the insurance coverage provided above throughout, or a self-insured program, for the entire term of this Sublease and for thirty (30) days after expiration of same.

14. Risk. Except as otherwise provided in Paragraph 12, all of Sublessee's personal property or property of any kind or description whatsoever on the Premises shall be at Sublessee's sole risk. Lessee and Lessor shall not be liable for any damage done to or loss of such personal property or damage or loss suffered by the business or occupation of Sublessee arising from any acts or neglect of any other persons unless and to the extent the damage is caused by the willful or negligent misconduct of Lessee or Lessor or a breach of Lessee's obligations under this Sublease.

15. Indemnification. Sublessee shall defend, indemnify, and hold harmless the Lessor and Lessee, their officers, officials, employees, agents, and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Sublessee's acts, errors or omissions, or from the conduct of Sublessee, or from any activity, work or thing done, permitted, or suffered by Sublessee arising from or in connection with this Sublease, except only such injury or damage as shall have been occasioned by the sole negligence of the Lessor or Lessee. Notwithstanding the above if any claim, liability or suit is caused by or results from those actions is covered by RCW 4.24.115, then this indemnity provision shall be valid and enforceable only to the extent of the negligence of Sublessee or its agents, employees, servants, customers, clients, contractors, or invitees.

The indemnification obligations contained in this paragraph shall not be limited by any worker's compensation, benefit or disability laws, and each indemnifying party hereby waives any immunity that the indemnifying party may have under any worker's compensation, benefit or disability laws. LESSEE AND SUBLESSEE ACKNOWLEDGE BY THEIR EXECUTION OF THIS SUBLEASE THAT EACH OF THE INDEMNIFICATION PROVISIONS OF THIS LEASE (SPECIFICALLY INCLUDING BUT NOT LIMITED TO THOSE RELATING TO WORKER'S COMPENSATION BENEFITS AND LAWS) WERE SPECIFICALLY

NEGOTIATED AND AGREED TO BY LESSEE AND SUBLESSEE. This Section shall survive the termination or expiration of this agreement.

17. Right of Entry. Lessee shall have the right to enter the Master Premises and the Premises.

18. Subletting. Sublessee shall not sublet the Premises or assign this Sublease or any part thereof for any period of time.

19. Notice. Any notice regarding a breach of this Sublease or termination thereof shall be in writing and be sent by certified mail or personally delivered to:

In the case of Lessee:
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040,
Attn: Office of the City Attorney

In the case of the Sublessee:
King County Wastewater Treatment Division

Attn: _____

Notice shall be deemed given when so delivered to Lessee or Sublessee, or five (5) days after it is placed, properly addressed with postage prepaid, in a depository for United States certified mail. Either party may provide for a different address by notifying the other party of said change as provided for herein.

20. Consent by Lessee. Whenever Lessee's and/or Lessor's consent or approval is required under this Sublease, such consent or approval may not be unreasonably withheld.

21. Successors and Assigns. The covenants and conditions contained in this Sublease shall bind the heirs, successors, executors, administrators, and assigns of the Parties.

22. Attorneys Fees. In the event legal proceedings are initiated to enforce any term of this Sublease, to recover any rent due under this Sublease, for the breach of any covenant or condition of this Sublease, or for the restitution of the Premises to the Lessee and/or eviction of the Sublessee, the prevailing party shall be entitled to recover, as an element of its cost of suit and not as damages, reasonable attorney and expert witness fees and costs to be fixed by the court.

23. Entire Agreement, Merger, and Waiver. This Sublease expresses and contains the entire agreement of the Parties and there are not express or implied representations, warranties, or agreements between them, except as contained in this Sublease or referenced within this Sublease. This Sublease may not be modified, amended, or supplemented except by a writing signed by both Lessee and Sublessee. No consent given or waiver made by Lessee or Lessor of any breach of Sublessee of any provision of this Sublease shall operate or be construed in any manner as a waiver of any subsequent breach of the same or of any other provision.

24. Captions. The captions of this Sublease are provided for convenience only and shall not be used in construing its meaning.

25. Severability. If any provision of this Sublease is found to be unenforceable, the remainder of this Sublease shall not be affected thereby.

26. Authority. Each individual executing this Sublease on behalf of the Parties represents and warrants that he or she is duly authorized to execute and deliver this Sublease on behalf of such Party and that this Sublease is binding upon the Parties according to its terms.

27. Lessee and Sublessee Relationship Only. Nothing contained in this Sublease shall be construed to create the relationship of principal and agent, partnership, joint venturer, or any association between Lessee and Sublessee.

28. Memorandum of Sublease. This Sublease shall not be recorded.

29. Consent of Sublease by Lessor. This Sublease is subject to the consent of Lessor. Accordingly, it shall be a condition precedent of this Sublease that Lessee has obtained the consent of Lessor.

[SIGNATURES APPEAR ON NEXT PAGE]

LESSEE:

City of Mercer Island

By: _____

Jessi Bon

Its: _____

City Manager

Approved as to form:

Bio Park, City Attorney

SUBLESSEE:

King County

By: _____

Mark Isaacson

Its: Director, Wastewater Treatment
Division

Approved as to form:

Verna P. Bromley

LESSOR'S CONSENT

Washington State Department of Transportation, as Lessor under the Master Lease, hereby consents to this Sublease and confirms the continuation of the Master Lease in full force and effect with Lessee as Tenant thereunder.

LESSOR:

Washington State Department of Transportation

By: _____

Date: _____

Its: _____

[illegible]

On this _____ day of _____, 20____, before me, the undersigned notary public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of **WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**, an agency of the State of Washington the authority that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said authority, for the uses and purposes therein mentioned, and on oath stated that she was duly authorized to execute the same.

WITNESS my hand and official seal hereto the day and year in this Certificate first above written.

Signature: _____

Notary Public in and for the State of Washington

Notary (print name):

Residing at: _____

My appointment expires: _____

EXHIBIT A

Master Lease

RECEIVED

AA-1-10221

MAY 12 2005

IC:

A I R S P A C E L E A S E

R.E. SERVICES

THIS IS A LEASE made and entered into and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, hereinafter called the "Lessor," and CITY OF MERCER ISLAND, hereinafter called the "Lessee";

WHEREAS, the land and premises to be leased are not presently needed exclusively for highway purposes; and

WHEREAS, the Lessor and Lessee deem it to be in the best public interest to enter into this lease;

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED THAT:

The Lessor does hereby lease to the Lessee the premises described in Exhibits "A," "A-1," "A-2," and "A-3" attached hereto and by this reference incorporated herein.

TERM. The term of this lease shall be 40 years commencing on the date of execution of this lease by the state.

TERMINATION. The Lessor may terminate this lease only if the premises are required for transportation purposes.

This lease may be terminated without penalty by Lessor after giving ninety (90) days written notice to the Lessee.

In the event that this lease is terminated by the Lessor, the Lessee shall not be entitled to any payment or compensation by reason of such termination. Provided, that where monetary rent is the basis of the lease, the Lessee shall be entitled to a return of rental payment based upon rent paid beyond the effective cancellation date. Furthermore, such leased premises

shall not be considered as part of or as contributing to the use of any adjoining or other properties owned, used or controlled by the Lessee in the event such other property or property rights of the Lessee are subject to condemnation subsequent to the execution of this lease.

SUBLET. Lessee may sublet the operation of the of the boat launch to another public agency after giving ninety (90) days written notice to Lessor and securing Lessor's written concurrence.

RENT. The Lessor and Lessee covenant and agree that consideration for this lease 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."

NONAPPLICABILITY OF RELOCATION ASSISTANCE. The Lessee acknowledges that the signing of this lease does not entitle the Lessee to assistance under the Uniform Relocation and Real Property Acquisition Policy (RCW 8.26).

SUBSEQUENT USE FOR TRANSPORTATION PURPOSES. The Lessee and the Lessor hereby affirm that upon expiration of, or termination of, this lease for any reason and the subsequent use of the premises for highway purposes, such would not be considered the use of any publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge within the meaning of 23 U.S.C. 138 and 49 U.S.C. 1653(f).

SITE SIGN. Within thirty (30) days of occupancy, Lessee at its expense shall erect and maintain a permanent sign stating as follows:

"This facility is located on highway right of way under an agreement between the City of Mercer Island and the Washington State Department of Transportation."

USE OF PREMISES. No use other than operating a public boat ramp and approved concessions shall be permitted without the prior written approval of the Lessor. These 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 1st 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 (10) percent of these fees will be paid to Lessor annually on October 1st of each year. In using these 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 limited access highways is not permitted. All grading and construction plans and any changes thereof are subject to approval by the Lessor.

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.

HAZARDOUS MATERIALS. The use of said premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall be permitted to rise above the grade line of the highway facility. Toxic and/or hazardous materials as defined under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" or Federal Superfund) (42

U.S.C § 9601 et seq.), or flammable materials, which flammable materials include but are not limited to explosives, petroleum products, paint, solvents, and resins, are not allowed on the site without the express permission of Lessor.

Lessee will cooperate in any environmental audits conducted by Lessor's staff or independent third parties. Lessee will provide a complete past operating history and history of regulatory compliance on the Leased Premises. Lessee will reimburse Lessor for the cost of such audits. Lessee will provide Lessor with notice of any inspections of the Leased Premises, notices of violations and orders to clean up contamination. Lessee will permit Lessor to participate in all settlement or abatement discussions. In the event the Lessee fails to take remedial measures as duly directed by the State, Federal, or local regulatory agency within ninety (90) days of such notice, the Lessor may elect to perform such work, and Lessee covenants and agrees to reimburse Lessor for all direct and indirect costs associated with Lessor's work.

LESSOR'S RESERVATION OF RIGHT TO MAINTAIN AND GRANT UTILITY FRANCHISES AND PERMITS. The Lessor reserves the right for utility franchise and permit holders to enter upon the leased premises to maintain existing facilities and, for itself, to grant utility franchises and/or permits across the leased premises. Such installation will be accomplished in such a manner as to minimize any disruption to the Lessee. The franchise/permit holder will be required to restore paving, grading and/or other improvements damaged by the installation.

The Lessee will not disturb markers installed by a franchise/permit holder and will contact the franchise/permit holder prior to any excavation in order that the franchise/permit holder may determine the location of the utility. It is the Lessee's responsibility to protect legally installed underground utilities.

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 structure 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 damages to the highway structure related to 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.

TAXES, ASSESSMENTS AND UTILITIES. The Lessee agrees to pay all taxes and assessments which involve the leased premises and/or which may hereafter become a lien on the interest of the Lessee in accordance with RCW 79.44.010, and also all taxes and assessments which may hereafter be levied or imposed upon the interest of the Lessee or by reason of this agreement. The Lessee is responsible for and agrees to pay for utilities which serve the leased premises.

LESSOR'S APPROVAL OF DESIGN AND CONSTRUCTION. The Lessee covenants that any regrading or improvements to be constructed on the premises will not at any time during or after construction either damage, threaten to damage or otherwise adversely affect

any part or element of the highway facility or the operation thereof. The Lessor shall be furnished with two (2) sets of complete plans, details and specifications and revisions thereto for grading and all improvements proposed to be placed on the premises, and no work shall be done without prior written approval of such plans by the Lessor. The Lessor agrees to approve or deny any request, submitted in writing, by the Lessee within ninety (90) days of submittal and approval of the work shall not unreasonably be withheld. All construction work shall be done in conformity with the plans and specifications as approved. The Lessor may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure compliance with the approved plans and specifications, protection of all parts and elements of the highway facility and compliance with Lessor's construction and safety standards. The improvements shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and construction when necessary.

"AS BUILT" PLANS. Within sixty (60) days following completion of underground utilities and/or buildings or other construction, Lessee shall furnish Lessor a complete set of reproducible "As Built" plans subject to Lessor's approval.

LESSOR'S RIGHT OF ENTRY AND INSPECTION. The Lessor, for itself, its agents and contractors, and for the Federal Highway Administration, reserves the right to enter upon the premises at any time without notice to the Lessee for the purpose of inspection, maintenance, construction or reconstruction of the highway facility or any element thereof. Any loss of the use of the leased premises due to the Lessor's exercise of such right will not require compensation to the Lessee. The Lessor shall in no way be responsible for any incidental or consequential damages due to such loss of use by Lessee. The Lessor and the Federal Highway Administration may from time to time go upon the premises

for the purpose of inspecting any excavation, construction or maintenance work being done by the Lessee. Entry upon the premises for any other purpose by the Lessor and the Federal Highway Administration shall be conducted with reasonable notice to the Lessee and during the hours of 8:00 a.m. to 5:00 p.m.

INSURANCE. At its expense, the Lessee shall keep the premises and improvements thereon continuously insured throughout the term of this lease by an insurer licensed to conduct business in the State of Washington against claims for personal injury or property damage. The insurance shall be in amounts of not less than One Million Dollars (\$1,000,000.00) to indemnify against the claim of any one person, and in an aggregate amount of not less than Three Million Dollars (\$3,000,000.00) to indemnify against claims of two or more persons resulting from any one incident. Coverage in the minimum amounts set forth herein shall not be construed to relieve the Lessee from liability in excess of such coverage. Lessee shall acquire property damage insurance in an amount of One Hundred Thousand Dollars (\$100,000.00.) The Lessee is a member of and insured by a municipal self-insured insurance pool (WCIA). The insurance pool is unable to name any non-member as an additional insured. The pool is capable of insuring Lessee's operation of the boat launch facility hereunder and is able to provide indemnification to the Lessor. See the letter from WCIA dated March 12, 1992, attached as Exhibit "C."

HOLD HARMLESS/INDEMNIFICATION CLAUSE. Lessee, its successors or assigns, will protect, save, and hold harmless the Washington State Department of Transportation, its authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omission of the Lessee, its assigns, authorized agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out of or in connection with any acts or activities authorized by this lease whether such claims result from activities on or off the leased premises. The Lessee

further agrees to defend the Washington State Department of Transportation, its authorized agents or employees in any litigation, including payment of any costs or attorney's fees, for any claims or action commenced, arising out of or in connection with acts or activities authorized by this lease. This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of the Washington State Department of Transportation or its authorized agents or employees; Provided that if the claims or damages are caused by or result from the concurrent negligence of (a) the Lessor, its authorized agents or employees and (b) the Lessee, its authorized agents, sublessees, or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Lessee or Lessee's authorized agents or employees. If, for any reason, Lessor has to defend itself against any claims filed against Lessor because of the operation of the land subject to this lease and arising out of the sole negligence or concurrent negligence of the Lessee, any costs, whether generated by the Attorney General's office or outside counsel, will be paid in full by Lessee, with the exception of those costs attributable to alleged negligence on the part of the Lessor.

NON-DISCRIMINATION. The Lessee, for itself, its successors, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap shall be excluded from participation in, be denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the facility now or hereafter on the premises, that in connection with the construction of any improvements on said lands and the furnishing of services thereon, no such discrimination shall be practiced in the selection of employees or contractors, or by contractors in the

selection and retention of their subcontractors, that such discrimination shall not be practiced against the public in their access to and use of the facility and services provided for public accommodation constructed or operated on, over, or under the right of way, and that the Lessee shall use the premises in compliance with all other requirements imposed pursuant to the Revised Code of Washington, Chapter 49.60 and Title 49, Code of Transportation, Part 21 (49 C.F.R. Part 21), and said nondiscrimination covenants shall be a material act of default entitling the Lessor to terminate this lease in accordance with the procedures set forth herein.

BINDING CONTRACT. The terms and obligations of this lease shall not become binding upon the State of Washington unless and until accepted and approved in writing for the Washington State Department of Transportation by the Secretary thereof or his/her duly authorized representative.

ATTORNEYS' FEES. In the event of any controversy, claim, or dispute arising out of this lease, the substantially prevailing party shall, in addition to any other remedy, be entitled to recover any reasonable costs or attorneys' fees which it incurs.

MODIFICATIONS. This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

NOTICES. Wherever in this lease written notices are to be given or made, they will be sent by certified or overnight mail addressed to the parties at the address listed below unless a different address shall be designated in writing and delivered to the other party.

LESSOR:

ATTN: PROPERTY MANAGEMENT SUPERVISOR
DEPARTMENT OF TRANSPORTATION
KF-01
P. O. BOX 47338
OLYMPIA, WA 98504-7338

LESSEE:

CITY OF MERCER ISLAND
9611 S.E. 36TH STREET
MERCER ISLAND, WA 98040-3738

3/11/94
Date

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION

By: Joachim Pestinger

Joachim Pestinger, SR/WA
Director, Real Estate Services

CITY OF MERCER ISLAND

By: Elliot Newnam

Title: Mayor

By: Dileen E. Symmonds

Title: City Clerk

APPROVED AS TO FORM:

March 16, 1994

By: Patricia K. Hightower

Assistant Attorney General

STATE OF WASHINGTON)
County of KING) : ss.

On this 22nd day of May 1992, before me personally appeared Elliot Newman and Debra Symmonds to me known to be the duly elected and qualified Mayor and City Clerk 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 he/she was authorized to execute said instrument by the City Council of said City.

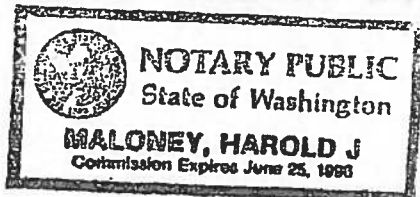
GIVEN under my hand and official seal the day and year last above written.

Ronald C. Robinson
Notary Public in and for the State
of Washington,
Residing at Mercer Island
My Appointment expires 11/30/92

STATE OF WASHINGTON)
County of Thurston) : ss.

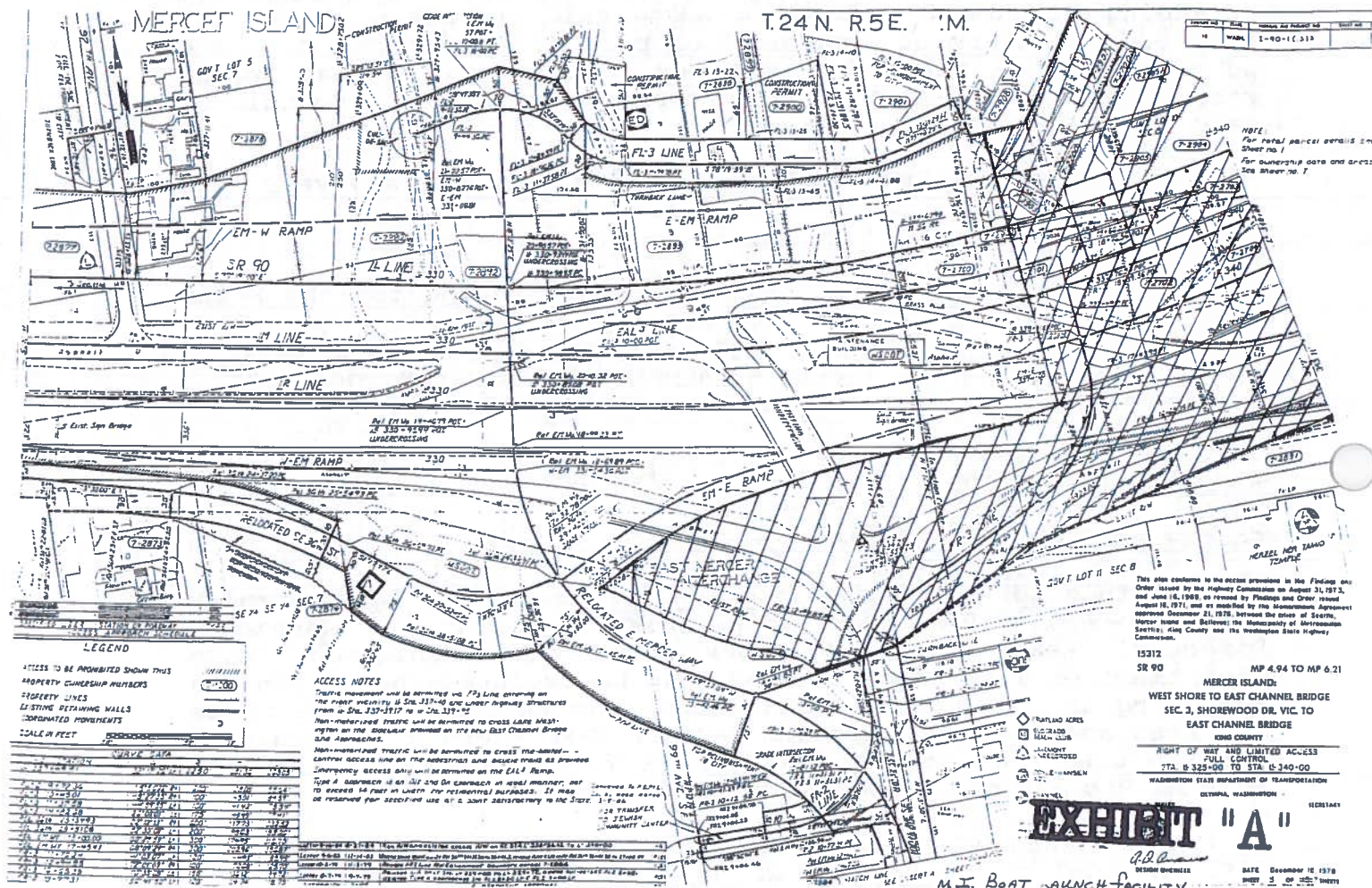
On this 11th day of March 1992 before me personally appeared Joachim Pestinger, to me known to be the duly appointed Director, Real Estate Services, for the Washington State Department of Transportation and that he executed the within and foregoing instrument and acknowledged the said instrument to be 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 11th day of March, 1992



Harold J. Maloney
Notary Public in and for the
State of Washington,
Residing at Ocean Harbor
My Appointment expires June 25, 1996

air.la/mercer-1



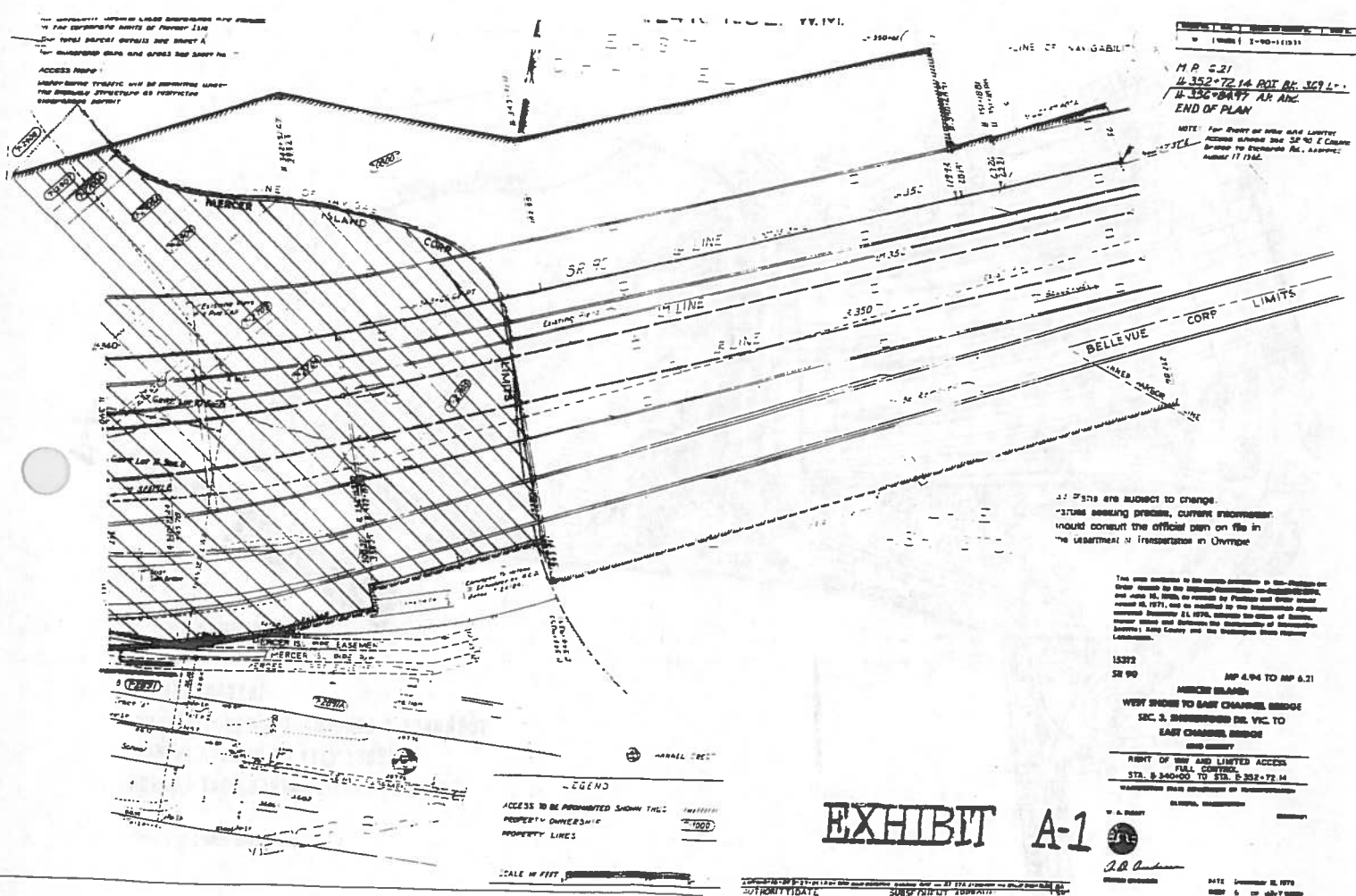


EXHIBIT A-1

This plan is subject to the terms and conditions of the contract between the Department of Transportation and the State of Maryland, and is not to be used for any other purpose without the written consent of the Department of Transportation.

15372
SR 90

MP 4.94 TO MP 6.21

MERCER ISLAND

WEST SHORE TO EAST CHANNEL BRIDGE

SEC. 3. SUBDIVISION DEL. VIC. TO EAST CHANNEL BRIDGE

AND EASEMENT

RIGHT OF WAY AND LIMITED ACCESS

FILED, CORRECT.

STA. 6,340+00 TO STA. 6,352+72.4

DEPARTMENT OF TRANSPORTATION

STATE OF MARYLAND

DATE: December 18, 1978

BY: S. D. [Signature]

**MERCER ISLAND BOAT LAUNCH
ADDENDUM TO AIRSPACE LEASE**

ORIGINAL

This is an addendum to Lease IC No. _____, AA No. _____, between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, Lessor, and THE CITY OF MERCER ISLAND, Lessee, ("Lease"), which was executed by the Lessee on May 22, 1992, and allows the Lessee to use a portion of Interstate 90 right of way (the "Leased Premises") for a public boat launch.

THE FOLLOWING CLAUSE IS HEREBY ADDED TO THE LEASE:

FAILURE TO MAINTAIN.

The Lessee agrees to maintain the Leased Premises to the same standards as are adhered to in the maintenance of other city parks, facilities and landscaped areas.

If the Lessor believes that the Lessee is not maintaining the Leased Premises in accordance with the above standards, the Lessor shall notify the Lessee in writing of its concerns and describe the maintenance which is expected to be performed.

Failure of the Lessee to perform the requested maintenance within fifteen (15) days of receipt of written notice shall constitute a breach of the Lease and the Lessor is entitled to enter upon the Leased Premises and perform the maintenance. The Lessee agrees to repay to the Lessor upon demand the entire cost of such maintenance performed by the Lessor. The maintenance performed by the Lessor under this provision shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

No other items of the Lease shall be altered by this agreement and shall apply equally to the agreement herein.

LESSOR: ATTN: PROPERTY MANAGEMENT SUPERVISOR
DEPARTMENT OF TRANSPORTATION
P.O. BOX 4-7338
OLYMPIA, WASHINGTON 98504-7338

LESSEE: CITY OF MERCER ISLAND
9611 S.E. 36TH STREET
MERCER ISLAND, WASHINGTON 98040-3738

DATED this 25th day of February, 1994.

CITY OF MERCER ISLAND

Judy Clibborn
By: Judy Clibborn, Mayor

Candice Stephens
By: Candice Stephens,
Associate City Clerk

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION

Joachim Pestinger
By: Joachim Pestinger, SR/WA
Director, Real Estate Services

STATE OF WASHINGTON

County of King

On this 25th day of February, 1994,
before me personally appeared Judy Clibborn and Candice
Stephens to me known to be the duly elected and qualified
Mayor and Associate City Clerk of the City of Mercer
Island, Washington who 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
he/she was authorized to execute said instrument by the
City Council of said City.

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



Ronald C. Dickinson
Notary Public in and for the
State of Washington,
Residing at Mercer Island
My Commission Expires 12/30/96
Printed Name RONALD C. DICKINSON

APPROVED AS TO FORM:

Patricia K. Nightingale
By: Patricia K. Nightingale
Assistant Attorney General

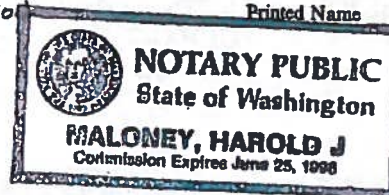
STATE OF WASHINGTON

County of Thurston

On this 15th day of March, 1994,
before me personally appeared Joachim Pestinger, SR/WA,
Director, Real Estate Services, for the Washington State
Department of Transportation, and that he executed the
within and foregoing instrument and acknowledged 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 is authorized to execute
said instrument.

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

Harold J. Maloney
Notary Public in and for the
State of Washington,
Residing at Sea Harbor
My Commission Expires June 25, 1996
Printed Name



A M E N D M E N T N U M B E R 1

t o

A I R S P A C E L E A S E

THIS AMENDMENT NUMBER 1 (Amendment) to that certain Airspace Lease entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (Lessor/WSDOT) and CITY OF MERCER ISLAND (Lessee/CITY), 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 (collectively, Lease), is entered into by and between Lessor, and Lessee, a municipal corporation of the state of Washington.

RECITALS

A. The Modifications section of the Lease authorized the parties to amend the Lease by written agreement signed by both parties.

B. Sound Transit has a transportation project, the East Link I-90 Seismic/Staging (Project) that requires the temporary use of the Premises. The purpose of the Project is to retrofit the I-90 East Channel Bridge to accommodate the East Link Light Rail project under current seismic standards. Pursuant to separate agreement, WSDOT has agreed to lease multiple properties to Sound Transit for the East Link I-90 project, including the Premises. Sound Transit has notified WSDOT that it will need the Premises December 1, 2017 until such time as the Project is complete, which Sound Transit anticipated will be six (6) months once Project work commences on the Premises.

C. Sound Transit plans to implement the Project in stages, which it and the CITY anticipate will enable the CITY to continue to use alternating portions of the Premises during the Project. The CITY and Sound Transit have identified potential impacts of the Project on the CITY's use of the Premises as well as acceptable mitigation measures.

D. The CITY and WSDOT believe it is in the interest of the public to suspend the Lease for the period of time from December 1, 2017 until such time as the Sound Transit's construction of the Project is complete.

E. During the suspension period, WSDOT will lease the Premises to Sound Transit, which lease will authorize Sound Transit to sublease to the CITY those portions of the Premises it does not need for the current phase of the Project.

F. WSDOT and CITY desire to amend the Lease to allow for a suspension of the Lease.

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. The parties agree to suspend the Lease commencing December 1, 2017 until such time as Sound Transit notifies WSDOT that the Premises is no longer needed for the Project (Suspension Period). At such time, WSDOT shall notify the CITY in writing and the Lease will automatically recommence.
3. The parties agree that the Term of the Lease shall be suspended for the duration of the Suspension Period.
4. During the Suspension Period, nothing herein shall preclude the CITY from coordinating its continued use of the Premises with Sound Transit. The CITY acknowledges and agrees that during the Suspension Period, WSDOT will not have control or use of the Premises and any use of the Premises by the CITY must be agreed to by and between the CITY and Sound Transit by separate written agreement, which WSDOT will not be a party to.

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IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be effective as of the last date written below.

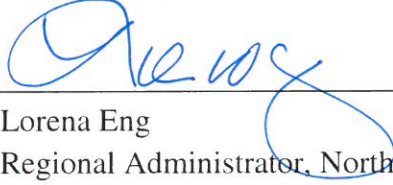
Signatures:

Accepted and Approved by:

CITY OF MERCER ISLAND

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

By: 
Julie T. Underwood
City Manager, City of Mercer Island


By: 
Lorena Eng
Regional Administrator, Northwest Region

Dated: 11/7/17

Dated: 11/15/2017

APPROVED AS TO FORM

APPROVED AS TO FORM

By: 
Attorney, City of Mercer Island

By: _____
Assistant Attorney General

Dated: 11/7/17

Dated: _____

TENANT ACKNOWLEDGMENT

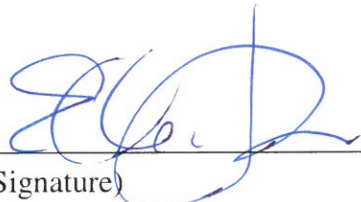
STATE OF WASHINGTON)

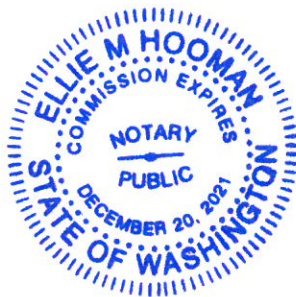
) ss

COUNTY OF KING)

On this 7th day of November before me personally appeared Julie T. Underwood 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)



Ellie Hoonan
Notary Public in and for the State of
Washington
Residing at: Mercer Island, WA
My commission expires: 12/20/2021

WSDOT ACKNOWLEDGMENT


STATE OF WASHINGTON)

) ss

COUNTY OF KING)

On this 15th day of November, 2017 before me personally appeared Lorena Eng, to me known to be the duly appointed Regional Administrator, Northwest Region, and that she 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 15th day of November, 2017.



(Signature)

PETER Alm

Notary Public in and for the State of Washington
Residing at: Bothell, WA

My commission expires: 2/21/21

EXHIBIT B

Master Premises

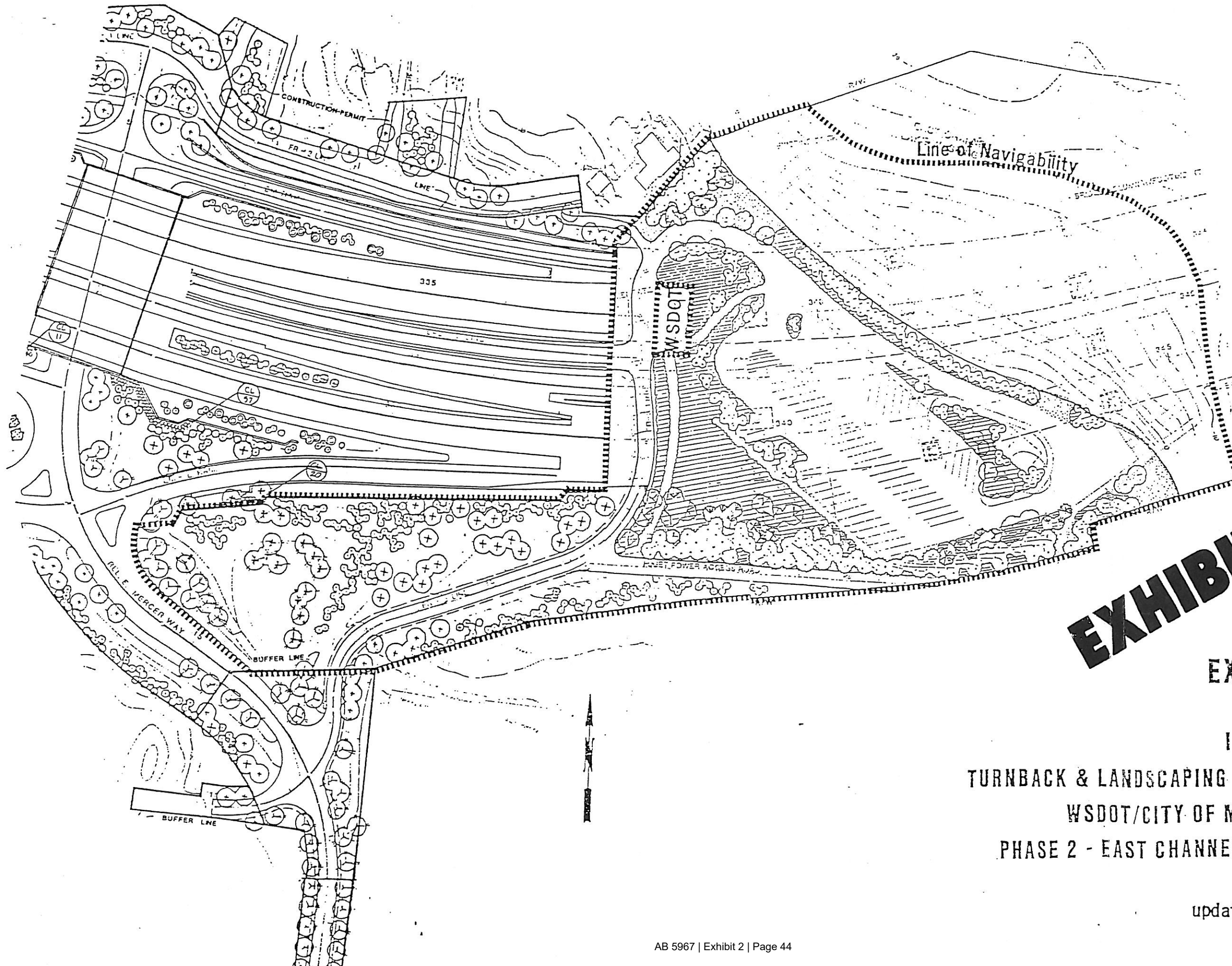


EXHIBIT "A"-2

EXHIBIT NO. 1

**INTERSTATE 90
TURNBACK & LANDSCAPING NEGOTIATIONS
WSDOT/CITY OF MERCER ISLAND
PHASE 2 - EAST CHANNEL BOAT LAUNCH**

updated July 13, 1987

EXHIBIT C

Premises

AIR LEASE

T.24 N. R.5E. W.M

EXHIBIT C

Lease AA-1-10221

ICN 1-17-05512

City of Mercer Island

Sheet 1 of 5

STAGING AREA 1:
EAST MERCER WAY
STAGING
SEE SHEET C161
AREA = 22,715 SF

Lease Premises

Access

LEGEND

WSDOT ROW

WSDOT LIMITED ACCESS ROW

PROPOSED STAGING AREA

PROPOSED STAGING OR

IDENTIFIED ELSEWHERE IN
THIS PACKAGE

8 * THE PRIVILEGE OF ACCESS TO AREAS WITHIN THE RIGHT OF WAY IS HERETOFORE FROM THE FR-3 LINE

This plan conforms to the access provisions in the Findings and Order issued by the Highway Commission on August 31, 1973, and June 16, 1969, as revised by Findings and Order issued August 16, 1971, and as revised by the Memorandum Agreement adopted December 21, 1976, between the Cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle; King County and the Washington State Highway Commission.

15312
SR 90 MP 4.94 TO MP 6.21

MERCER ISLAND:
WEST SHORE TO EAST CHANNEL BRIDGE
SEC. 3, SHOREWOOD DR. VIC. TO
EAST CHANNEL BRIDGE

RIGHT OF WAY AND LIMITED ACCESS
FULL CONTROL
STA. 4-325+00 TO STA. 4-340+00

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
OLYMPIA, WASHINGTON

W. A. BULLEY SECRET

210

F. H. Andrews

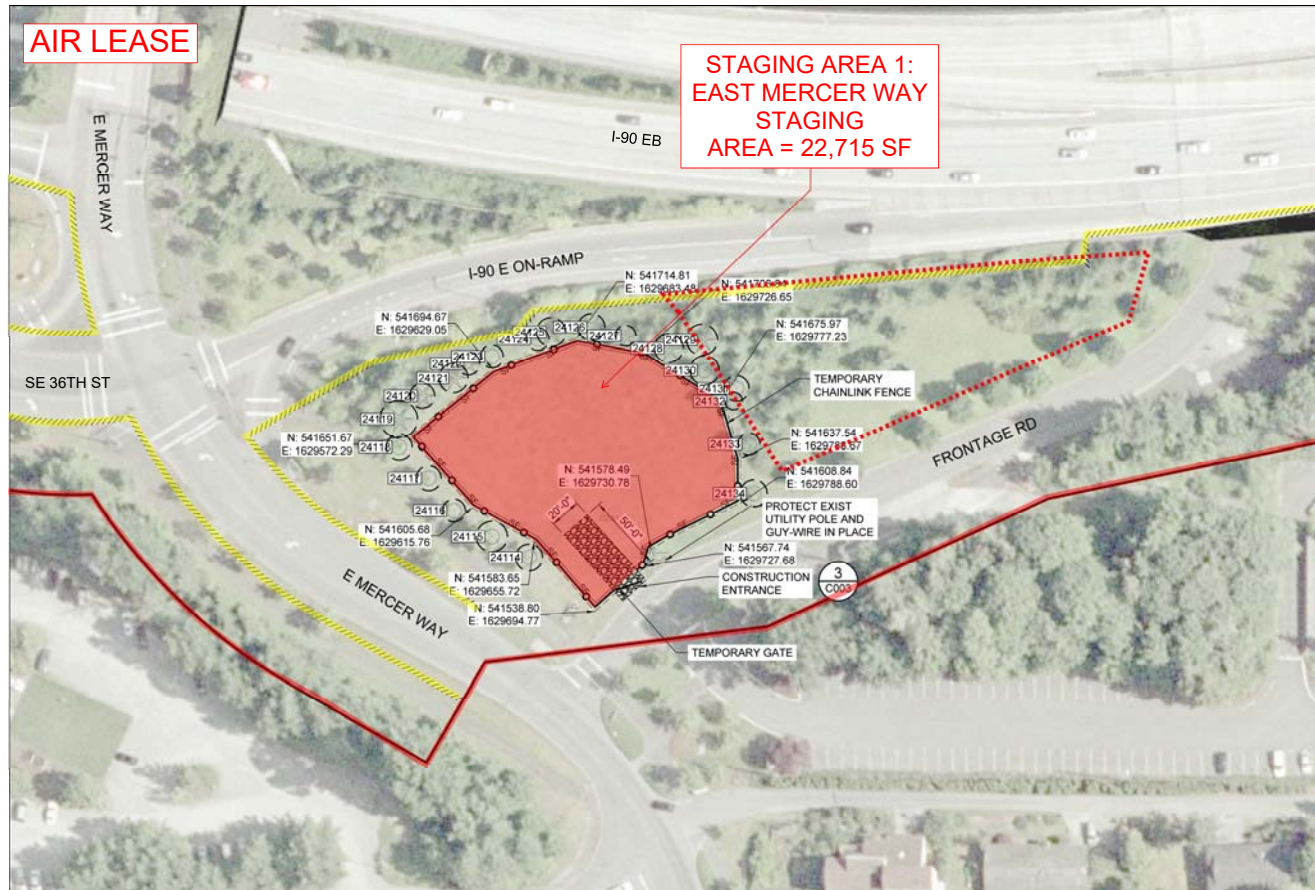
DESIGN ENGINEER DATE December 18, 1971

Designated For Limited Access Control By Comm. Res. No. 85, 100th Cong.

100

0-2 2/4

AB 5967 | Exhibit 2 | Page 46



NOTES:

1. ANY STAGING OUTSIDE OF THE AREA SHOWN WILL BE CONTRACTOR'S RESPONSIBILITY TO NEGOTIATE AND SECURE.
2. CONTRACTOR TO PREPARE THE STAGING AREA SURFACE AS NEEDED WITH CRUSHED SURFACING BASE COURSE OR QUARRY SPALLS. FOR RESTORATION, CONTRACTOR SHALL COMPLETELY REMOVE ALL MATERIAL IN ORDER TO REESTABLISH THE PRE-CONSTRUCTION GRADE, PREPARE THE SUB-GRADE, AND PLACE TOP SOIL AND LAWN SEED
3. IF DAMAGED DURING CONSTRUCTION, REMOVE AND REPLACE SECTIONS OF CURB TO NEAREST JOINT ALONG FRONTAGE RD.

LEGEND

- WSDOT ROW
- WSDOT LIMITED ACCESS ROW
- PROPOSED STAGING AREA
- PROPOSED TREE PLANTING AREA IDENTIFIED ELSEWHERE IN THIS PACKAGE

EXHIBIT C

Lease AA-1-10221
ICN 1-17-05512
City of Mercer Island
Sheet 2 of 5

BORDER FILE EDITION: KCMWD-2012-Dlize-TB-Border
PLOT DATE: 10/16/2019 12:21 PM
PLOT BY: J. A. G. 10/16/2019

NO	REVISION DESCRIPTION	BY	APVD	DATE



PRELIMINARY ISSUE DRAWING
INFORMATION ONLY
90% REVIEW
SEPTEMBER 2019



DESIGNED/DRAWN:
B. NELSON
PROJECT ENGINEER:
J. CHAE
DESIGN APPROVAL:
R. BROWNE
PROJECT ACCEPTANCE:
S. YILDIZ

SCALE:
AS NOTED
REFERENCE
1" = 40'
FACILITY NUMBER:
CONTRACT NO:
C01340C20



DEPARTMENT OF NATURAL RESOURCES & PARKS
WASTEWATER TREATMENT DIVISION
NORTH MERCER ISLAND INTERCEPTOR AND ENATAI
INTERCEPTOR UPGRADE - CONVEYANCE IMPROVEMENTS
OFF SITE STAGING AREA
EAST MERCER WAY

DATE:
PROJECT FILE NO:
TBD
DRAWING NO:
C161
SHEET NO. / TOTAL
REV. NO.

Notes:

AIR LEASE

ass shorelands are included
of Mercer Island.
For total parcel details see sheet No. 1
For ownership data and areas see sheet No. 7

Access Note:

Waterborne traffic will be permitted under
the highway structure as restricted
clearances permit.

ACCESS NOTE:

NON-MOTORIZED TRAFFIC WILL BE PERMITTED
TO CROSS LAKE WASHINGTON ON THE SIDEWALK
PROVIDED ON THE NEW EAST CHANNEL BRIDGE
TRAFFIC MOVEMENT WILL BE PERMITTED UNDER
HIGHWAY STRUCTURES FROM U. STA. 337+39.17
TO U. STA. 344+00

T.24N. R.5E. W.M.

EAST
CHANNEL

SECTION NO.	STATE	FEDERAL AID PROJ/SECT NO.	SHEET NO.
10	WASH.	I-90-1 (13) 3	

M.P. 6.21
U. 352+72.14 P.O.T. Bk. 369 L.T. =
U. 356+84.97 A.P. And.
END OF PLAN

NOTE: For Right of Way and Limited
Access ahead see SR 90, E. Channel
Bridge to Richards Rd., Approved
August 17, 1965

**STAGING AREA 2:
MERCER ISLAND BOAT
LAUNCH STAGING
(BELOW I-90 BRIDGE)
SEE SHEET C131
AREA = 30,088 SF**

Lease Premises

EXHIBIT C

Lease AA-1-10221
ICN 1-17-05512
City of Mercer Island
Sheet 4 of 5

LEGEND

- WSDOT ROW
- WSDOT LIMITED ACCESS ROW
- PROPOSED STAGING AREA

LEGEND

ACCESS TO BE PROHIBITED SHOWN THIS
PROPERTY OWNERSHIP
PROPERTY LINES

SCALE IN FEET

This plan conforms to the access provisions in the Findings and
Order issued by the Highway Commission on August 31, 1973,
and June 16, 1969, as revised by Findings and Order issued
August 16, 1971, and as modified by the Memorandum Agreement
approved December 21, 1976, between the cities of Seattle,
Mercer Island and Bellevue, the Municipality of Metropolitan
Seattle, King County and the Washington State Highway
Commission.

15312
SR 90 MP 4.94 TO MP 6.21

MERCER ISLAND:
WEST SHORE TO EAST CHANNEL BRIDGE
SEC. 3, SHOREWOOD DR. VIC. TO
EAST CHANNEL BRIDGE
KING COUNTY

RIGHT OF WAY AND LIMITED ACCESS
FULL CONTROL
STA. U. 340+00 TO STA. U. 352+72.14
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

W. A. DULLEY OLYMPIA, WASHINGTON SECRETARY



DESIGN ENGINEER

DATE: December 18, 1978
SHEET 6 OF 13-7 SHEETS

Designated For Limited Access Control By Comm. Res. No. 99, July 23, 1963

EXHIBIT D

Mitigation Measures

Action and Impact	Mitigation
Lane closures on Frontage Road. Slower access for boaters and traffic congestion on the Frontage Road.	<p>King County will maintain public access to the boat launch throughout its occupancy. Access to the boat launch and parking that is not affected by construction would be maintained and would include the use of flaggers on Frontage Road as needed to ensure safe vehicle access during intermittent lane closures. King County will make all reasonable efforts to schedule lane closures timed to avoid peak season demand, especially on weekends. King County does not anticipate closing Frontage road on weekends. However, if weekend work is required, King County will work with the City to minimize any impacts. The County will not schedule lane closures anytime during SeaFair weekend.</p> <p>King County will conduct public communications with on-site signage and media channels about the project and anticipated lane closure dates in advance of all lane closures.</p>
Closure of parking spaces at the boat launch for two years. Loss of public access to the boat launch. Congestion in the parking lot. Loss of revenue to the City for daily and seasonal passes for boat trailer parking.	King County will provide traffic control measures at the boat launch parking area to facilitate traffic flow through the site. King County will deploy and maintain public communications, including directional signage that direct overflow parking of boat trailers to Mercer Island City Hall on weekends. Signage and traffic control will also be provided at the City Hall site to direct boaters how to park there. King County will compensate the City at the appraised fair market value in the amount of \$ _____ for the duration of its occupation of the boat launch property. The City will transfer those funds to WSDOT, less WSDOT-approved expenses for contract management and loss of revenue from the occupied parking spaces.
Non-recreational use of the premises. City risks being out of compliance with Washington State Recreation and Conservation Office ("RCO") and in violation of grant agreements.	King County will comply with conditions described in any policy waiver provided to the City by the Washington State Recreation and Conservation Office.
Fenced construction site containing equipment and materials. Presents public safety and security risks.	King County will be responsible for any and all loss or damage to materials or equipment stored in the premises. Any personal injury, damage to City property, altercations, or incidents involving police, fire, or ambulance services on the premises must be reported to the City's representative within 24 hours of the occurrence.
Stockpiling and staging in parking lot. Pavement and curbing wear and tear from construction staging activities.	King County will repair the parking lot to restore it to pre-occupation condition and repave that portion of the Premises occupied by the County at the end of its period of occupation. This must occur within the period of occupation unless other arrangements are made with the City. Repaving under this Sublease means that the contractor will plane 1.5" existing HMA surface and overlay with 1.5" HMA.

EXHIBIT E

Restrictions for the Protection of the SR 90 Bridge Structure

1 PROVIDE STAGING PLAN AS DESCRIBED IN LEASE LANGUAGE, NO STORAGE OF FLAMMABLE MATERIAL

2
3
4
5
6 } BULLETS AS DESCRIBED IN LEASE LANGUAGE ILLUSTRATED BELOW.

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

7 PROVIDE 24/7 ACCESS TO LOCKED AREAS BY LEASE LANGUAGE
2 MAY BE REDUCED TO 10' BASED ON LOCATION AND SITUATION

