

RESOLUTION OF APPRECIATION FOR FRANCIE LAKE'S SERVICE TO THE MERCER ISLAND COMMUNITY

WHEREAS, Francie Lake first joined the City of Mercer Island as an intern during the summers of 1978 to 1983 and her continuous service began in November 1983 when she was hired as Accounts Payable Clerk; and

WHEREAS, Francie was promoted to Utility Accountant in 1987, Fund Accounting Supervisor in 1991, and Financial Operations Manager in 1999; and

WHEREAS, Francie was appointed to Deputy Finance Director in 2008, and held that role until her retirement in June 2019; and

WHEREAS, Francie coordinated the development of the City's six-year Capital Improvement Program every two years, played a key role in the development of the six-year Transportation Improvement Plan annually, and closely monitored the budget for every capital project; and

WHEREAS, Francie supervised the Utility Billing Team; developed the City's water, sewer, stormwater, and EMS utility rates annually; developed utility fiscal policies; and updated the City's cross connection control program following the "boil water" advisory; and

WHEREAS, Francie implemented an enterprise financial management system and a utility billing system, developed General Fund overhead cost allocation models related to the Capital Improvement Program and the City's three Utility Funds, and managed the City's investments; and

WHEREAS, Francie is highly respected throughout the organization and has been a key "pillar" on the management team.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mercer Island, on behalf of its residents, that the City Council commends Deputy Finance Director Francie Lake for her more than 35 years of distinguished public service and extends its sincerest thanks and appreciation for her leadership and countless contributions to fiscal management on Mercer Island.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 18th day of June 2019 and caused the seal of the City of Mercer Island to be affixed.

Debbie Bertlin, Mayor

ATTEST:

Deborah A. Estrada, City Clerk

RESOLUTION OF APPRECIATION FOR CATHY GENTINO'S SERVICE TO THE MERCER ISLAND COMMUNITY

WHEREAS, Cathy Gentino is retiring after serving as the Mercer Island School-based Counselor and Resource and Referral Place Coordinator in Mercer Island High School for 30 years; and

WHEREAS, Cathy was one of the first YFS School Counselors placed in the schools in the Mercer Island School District; and

WHEREAS, Cathy maintained that position with distinction, serving the mental health and social-emotional needs of generations of students and parents; and

WHEREAS, Cathy's service paved the way for growing the school counseling program which now has school counselors placed in all Mercer Island Public Schools; and

WHEREAS, Cathy has honored the mental health profession with her commitment to treating or preventing youth suicide, pediatric depression and anxiety, dating violence, trauma, family dysfunction, and more; and

WHEREAS, Cathy has demonstrated unwavering support for diversity and inclusion in her role as BRIDGES leader, cultural navigator for new students; and advisor to the student Queer-Straight Alliance club; and

WHEREAS, Over the course of her career with the City, she has made a significant impact in the lives of generations of Island youth and families evidenced by providing the following services: enrolling 2,350 individual and family therapy clients, providing 8, 415 parent meetings and consultations, providing 15,600 individual student counseling sessions, and providing 19, 300 individual student drop-in sessions.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mercer Island, on behalf of its citizens, that the City Council commends Mental Health Therapist Cathy Gentino for her 30 years of distinguished public service and extends its sincerest thanks and appreciation for her leadership and countless contributions to the well-being of the youth on Mercer Island.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 18th day of June 2019 and caused the seal of the City of Mercer Island to be affixed.

Debbie Bertlin, Mayor

ATTEST:

Deborah A. Estrada, City Clerk



**CITY COUNCIL MINUTES
SPECIAL MEETING
JUNE 10, 2019**

CALL TO ORDER & ROLL CALL

Mayor Debbie Bertlin called the Special Meeting to order at 5:00 pm at City Hall, 9611 SE 36th Street, Mercer Island, Washington.

Mayor Debbie Bertlin, Deputy Mayor Salim Nice and Councilmembers Lisa Anderl (by phone), Bruce Bassett, Wendy Weiker (by phone), Dave Wisenteiner, and Benson Wong (by phone) were present.

SPECIAL BUSINESS

At 5:0 pm, Mayor Bertlin convened an Executive Session to discuss pending or potential litigation with legal counsel pursuant to RCW 42.30.110(1)(i) for approximately 60 minutes.

At 5:59 pm, Mayor Bertlin extended the Executive Session for an additional 20 minutes.

At 6:12 pm, Councilmember Weiker left the Executive Session.

At 6:19 pm, Mayor Bertlin adjourned the Executive Session.

ADJOURNMENT

The Special Meeting adjourned at 6:20 pm.

Debbie Bertlin, Mayor

Attest:

Deborah Estrada, City Clerk



BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND, WA

AB 5581
June 18, 2019
Consent Calendar

Table with 3 columns: Title (THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT WITH PARKWAY MANAGEMENT GROUP TO DEVELOP LONG-TERM TRANSIT COMMUTER PARKING IN THE TOWN CENTER), Action (Authorize the Interim City Manager to execute the proposed Third Amendment to the Purchase and Sale Agreement ("PSA") with Parkway Management Group et al. to further extend the due diligence period.), and checkboxes (Discussion Only, Action Needed, Motion, Ordinance, Resolution).

Table with 2 columns: Department/Council Liaison/Exhibits/Goal/Manager and corresponding details (City Manager (Jessi Bon, Interim City Manager), n/a, 1. Third Amendment to PSA, 1. Prepare for Light Rail/Improve Mobility, APPROVED BY CITY MANAGER).

Table with 3 columns: Financial Metric (AMOUNT OF EXPENDITURE, AMOUNT BUDGETED, APPROPRIATION REQUIRED), Currency (\$), and Value (n/a).

SUMMARY

BACKGROUND

In 2018, during the May 15 (AB 5418) and June 5 (AB 5434) regular meetings of the Mercer Island City Council, the Council reviewed, discussed and authorized the Purchase and Sale Agreement ("PSA") with Parkway Management Group et al. (collectively, "Parkway") to acquire the former Tully's property, located at 7810 SE 27th Street, and combine it with a portion of adjacent land the City already owned at Sunset Highway, known as Parcel 12. The PSA serves as the transaction document necessary for the City to purchase the Tully's property and combine it with adjacent City-owned land known as Parcel 12/Sunset Highway to develop long-term, transit commuter parking for Mercer Island use near the future East Link light rail station, anticipated to open in 2023. Following Council authorization, the City Manager and Parkway representatives executed the PSA, and it became effective on June 7, 2018. On December 6, 2018, the City Council approved the First Amendment to the PSA (AB 5512), which was a short extension of the Due Diligence period until December 18, 2018 so that a longer extension could be negotiated. On December 18, 2018, the City Council approved the Second Amendment to the PSA (AB 5518) which extended the Due Diligence period until June 30, 2019 to allow continued environmental investigation of the site.

TERMS OF DUE DILIGENCE EXTENSION REQUESTED BY BUYER (CITY)

The due diligence period in the Second Amendment to the PSA is set to expire on June 30, 2019. During the due diligence period, the City's environmental consultants (Aspect Consulting, LLC) have been conducting a Phase 2 environmental site investigation to determine the vertical and horizontal extent of the contamination, and City staff and outside legal counsel have been engaging in negotiations with the prior

owner/operator known to have contaminated the site, BP/ARCO, in efforts to obtain recovery of site remediation costs. The site investigation and negotiations continue to take longer than anticipated and additional time is needed to complete both activities.

The City and Parkway have agreed to extend the due diligence period to Friday, November 1, 2019. The parties' agreement remains that the Sellers will issue a refund to the City at closing equal to fifty percent of the monthly rent payments in lieu of a credit against the Purchase Price; in addition, the parties continue to agree that the City will have use and control of the site, excluding the building, during the due diligence period.

RECOMMENDATION

Interim City Manager

MOVE TO: Authorize the Interim City Manager to execute the Third Amendment to the Purchase and Sale Agreement, in substantially the form attached as Exhibit 1 hereto, to extend the Due Diligence Period to Friday, November 1, 2019.

**THIRD AMENDMENT TO
PURCHASE AND SALE AGREEMENT**

This Third Amendment to Purchase and Sale Agreement (“**Third Amendment**”) is made and entered into as of **June __, 2019** by and between **CITY OF MERCER ISLAND, a Washington municipal corporation** (“Buyer”) and **Buty Limited Partnership, a Washington limited partnership; Jean Mitchell Burton Testamentary Trust; Martin M. Burton Irrevocable Trust, dated April 16, 1987; Shelley Lynn Burton, as her separate estate; Shelley Lynn Burton Trust; and Melissa Mary Burton Trust, the foregoing as Tenants in Common as to 100% ownership of the Property (as defined below)**, (collectively, “Seller”) (referred to together as the “Parties”), with respect to that certain Purchase and Sale Agreement dated June 7, 2018 between Buyer and Seller, with an Effective Date of June 7, 2018 (as amended, the “PSA”) regarding the sale of property commonly known as the “Tully’s site” and located at 7810 SE 27th Street, Mercer Island, Washington 98040 (the “Property”). Capitalized terms not expressly defined herein shall have the meaning ascribed to them in the PSA.

The Parties agree as follows:

1. Section 4.1.1(a) is amended to provide that: The Due Diligence Period shall be extended to Friday, November 1, 2019.

The remainder of Section 4.1.1(a) shall remain unchanged.

2. If any provision of the PSA, or prior amendments thereto, conflicts with this Third Amendment, this Third Amendment shall control.

All other terms and conditions of the Agreement remain unchanged.

[SIGNATURES BEGIN ON FOLLOWING PAGES]

BUYER:

**CITY OF MERCER ISLAND, a
municipal corporation**

By: _____

Name: Jessica L. Bon

Its: Interim City Manager

Date: _____

Approved as to form:

By: _____

Bio Park, Interim City Attorney

SELLERS:

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Frank M. Buty
Title: General Partner

Date: _____

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Steve Buty
Title: General Partner

Date: _____

**BUTY LIMITED PARTNERSHIP, a
Washington limited partnership**

By: _____
Printed Name: Kim Buty
Title: General Partner

Date: _____

SHELLEY LYNN BURTON TRUST

By: _____
Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

**JEAN MITCHELL BURTON
TESTAMENTARY TRUST**

By: _____
Printed Name: Shelley Burton
Title: Successor Trustee

Date: _____

**MARTIN M. BURTON IRREVOCABLE
TRUST, dated April 16, 1987**

By: _____
Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

**SHELLEY LYNN BURTON, as her
separate estate**

By: _____
Printed Name: Shelley L. Burton

Date: _____

MELISSA MARY BURTON TRUST

By: _____
Printed Name: Kristina C. Udall
Title: Trustee

Date: _____



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND, WA**

**AB 5579
June 18, 2019
Consent Calendar**

ACCEPTANCE OF WASHINGTON STATE HEALTH CARE AUTHORITY FUNDS FOR TRAUMA INFORMED APPROACHES	Action: Accept funds from Washington State Health Care Authority to fund behavioral health Trauma Informed Approaches for the Department of Youth and Family Services.	<input type="checkbox"/> Discussion Only <input type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
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DEPARTMENT OF	Youth and Family Services (Cynthia Goodwin)
COUNCIL LIAISON	n/a
EXHIBITS	1. Contract for Services: Washington State Health Care Authority, Division of Behavioral Health
2019-2020 CITY COUNCIL PRIORITY	n/a
APPROVED BY CITY MANAGER	

AMOUNT OF EXPENDITURE	\$	50,000
AMOUNT BUDGETED	\$	n/a
APPROPRIATION REQUIRED	\$	50,000

SUMMARY


The Washington State Health Care Authority (HCA) granted the City of Mercer Island’s Department of Youth and Family Services (YFS) a grant to expand a Trauma Informed Approach (TIA) to the department’s provision of community-based and school-based mental health services. TIA’s goal is to acknowledge the role of trauma on individuals seeking mental health services and to enhance the organization’s response in a manner that maximizes benefits clients receive.

Funding will be used to assess the YFS Department’s physical layout to enhance feelings of safety and the intake process, and to improve the assessment and treatment goals to engage clients. In addition to the intra-department work, YFS staff will provide TIA training to other City staff and Mercer Island School District staff for whom this approach will benefit in their work. This contract will be executed between June and September 2019.

RECOMMENDATION

Youth and Family Services Director

MOVE TO: Accept a grant of \$50,000 from the Washington State Health Care Authority, Division of Behavioral Health, to expand the Department’s work in Trauma Informed Approaches.

	PROFESSIONAL SERVICES CONTRACT for Trauma Informed Approaches (TIA) Services	HCA Contract Number: K3682 Resulting from Solicitation Number RFA 3591
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THIS CONTRACT is made by and between the State of Washington Health Care Authority, hereinafter referred to as HCA, and the party whose name appears below, hereinafter referred to as Contractor.

CONTRACTOR NAME City of Mercer Island Youth and Family Services		CONTRACTOR DOING BUSINESS AS (DBA)			
CONTRACTOR ADDRESS 2040 84TH AVE. SE		City MERCER ISLAND	<table border="1"> <tr> <td data-bbox="1177 577 1299 646"> State WA </td> <td data-bbox="1299 577 1502 646"> Zip Code 98040 </td> </tr> </table>	State WA	Zip Code 98040
State WA	Zip Code 98040				
CONTRACTOR CONTACT Cindy Goodwin	CONTRACTOR TELEPHONE 206.275.7611	CONTRACTOR E-MAIL ADDRESS Cindy.Goodwin@mercergov.org			
Is Contractor a Subrecipient under this Contract? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		CFDA NUMBER(S): 93.958, 93.959	FFATA Form Required <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		

HCA PROGRAM CBH Tx	HCA DIVISION/SECTION Division of Behavioral Health and Recovery (DBHR)
HCA CONTACT NAME AND TITLE Matthew Gower, Behavioral Health Administrator	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 42702 Olympia, WA 98504-2702
HCA CONTACT TELEPHONE (360) 725-9556	HCA CONTACT E-MAIL ADDRESS matthew.gower2@hca.wa.gov

CONTRACT START DATE May 1, 2019	CONTRACT END DATE October 31, 2019	TOTAL MAXIMUM CONTRACT AMOUNT \$50,000
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PURPOSE OF CONTRACT:
 To complete implementation work and promote adoption of Trauma Informed Approaches (TIA) into their organizations and their communities.

The parties signing below warrant that they have read and understand this Contract, and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by HCA.


CONTRACTOR SIGNATURE 	PRINTED NAME AND TITLE Jessi Conroy, Intwaim City Mgr.	DATE SIGNED 6/10/19
HCA SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

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- Attachment 1: Confidential Information Security Requirements
- Attachment 2: Federal Compliance, Certifications and Assurances
- Attachment 3: Audit Verification Form
- Attachment 4: Contractor Intake Form
- Attachment 5: Work Plan

Schedules

- Schedule A: Statement of Work (SOW)

Exhibits

- Exhibit A: HCA RFA for Transformation Enhancement Grant for Trauma Informed Approaches (TIA) Services
- Exhibit B: Response to HCA RFA 3591

Note: Exhibits A and B are not attached but are available upon request from the HCA Contracts Administrator.

Trauma Informed Approaches Services

Recitals

The state of Washington, acting by and through the Health Care Authority (HCA), issued a Request for Application (RFA) dated March 21, 2019, (Exhibit A) for the purpose of purchasing Trauma Informed Approaches Services in accordance with its authority under chapters 39.26 and 41.05 RCW.

The Contractor has:

Submitted a timely Response to HCA's submitted a timely Response to HCA's RFA #3591 (Exhibit B).

Been evaluated by HCA and has properly submitted Responses to the above-referenced RFA and has identified as one of the Apparent Successful Applicants.

Been determined by HCA that entering into a Contract with Contractor will meet HCA's needs and will be in the State's best interest.

NOW THEREFORE, the Contractor has been awarded by HCA this Contract, the terms and conditions of which will govern Contractor's providing to HCA the services described above.

IN CONSIDERATION of the mutual promises as set forth in this Contract, the parties agree as follows:

1. STATEMENT OF WORK (SOW)

The Contractor will provide the services and staff as described in Schedule A: *Statement of Work*.

2. DEFINITIONS

"Authorized Representative" means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

"Breach" means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

"Business Associate" means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this DSA includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

“Business Days and Hours” means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Centers for Medicare and Medicaid Services” or **“CMS”** means the federal office under the Secretary of the United States Department of Health and Human Services, responsible for the Medicare and Medicaid programs.

“CFR” means the Code of Federal Regulations. All references in this Contract to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

“Confidential Information” means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person's health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

“Contract” means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

“Contractor” shall mean that agency, firm, provider, organization, individual or other entity performing services under this contract. It shall include any subcontractor retained by the prime contractor as permitted under the terms of this contract.

“Covered entity” means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

“Data” means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

“Effective Date” means the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“HCA Contract Manager” means the individual identified on the cover page of this Contract who will provide oversight of the Contractor's activities conducted under this Contract.

“Health Care Authority” or **“HCA”** means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

"Overpayment" means any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Contract, including amounts in dispute.

"Proprietary Information" means information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

"Protected Health Information" or "PHI" means individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv).

"Response" means Contractor's Response to HCA's RFA listed on page four of this contract, Exhibit B hereto.

"RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <http://apps.leg.wa.gov/rcwl/>.

"RFA" means the Request for Applications used as the solicitation document to establish this Contract, including all its amendments and modifications and is Exhibit A hereto.

"Statement of Work" or "SOW" means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline, and is Schedule A hereto.

"Subcontractor" means a person or entity that is not in the employment of the Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term "Subcontractor" means subcontractor(s) of any tier.

"Subrecipient" means a contractor operating a federal or state assistance program receiving federal funds and having the authority to determine both the services rendered and disposition of program. See OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for additional detail.

"USC" means the United States Code. All references in this Contract to USC chapters or sections shall include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>

“WAC” means the Washington Administrative Code. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: <http://app.leg.wa.gov/wac/>.

3. SPECIAL TERMS AND CONDITIONS

3.1 TERM

- 3.1.1 The initial term of the Contract will commence on May 1, 2019, or date of last signature, whichever is later, and continue through October 31, 2019, unless terminated sooner as provided herein.
- 3.1.2 This Contract may be extended through in whatever time increments HCA deems appropriate. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.
- 3.1.3 Work performed without a contract or amendment signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before a contract or any subsequent amendment(s) is fully executed.

3.2 COMPENSATION

- 3.2.1 The Maximum Compensation payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A: *Statement of Work* is \$, and includes any allowable expenses.

3.3 INVOICE AND PAYMENT

- 3.3.1 Contractor must submit accurate invoices to the following address for all amounts to be paid by HCA via e-mail to: Acctspay@hca.wa.gov. Include the HCA Contract number in the subject line of the email.
- 3.3.2 Contractor must submit properly itemized invoices to include the following information, as applicable:
 - 3.3.2.1 HCA Contract number listed on the cover page of contract (first page);
 - 3.3.2.2 Contractor name, address, phone number; and
 - 3.3.2.3 Description of Services.
- 3.3.3 HCA will return incorrect or incomplete invoices to the Contractor for correction and reissue. The Contract Number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract.
- 3.3.4 In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at

<http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed invoices. Payment will be directly deposited in the bank account or sent to the address Contractor designated in its registration.

- 3.3.5 Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Contract expiration date ("Belated Claims"). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

3.4 CONTRACTOR AND HCA CONTRACT MANAGERS

- 3.4.1 Contractor's Contract Manager will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.
- 3.4.2 HCA's Contract Manager is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding contract performance and deliverables. The HCA Contract Manager has the authority to accept or reject the services provided and must approve Contractor's invoices prior to payment.
- 3.4.3 The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

See first page of the Contract for Contractor Contact Manager Information.

Health Care Authority Contract Manager Information

Division: Division of Behavioral Health and Recovery
Name: Mathew Gower
Title: Behavioral Health Administrator
Address: Health Care Authority
626 8th Avenue SE
PO Box 42702
Olympia, WA 98504-2702
Phone: (360) 725-9556
Email: matthew.gower2@hca.wa.gov

3.5 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

3.5.1 See first page of the contract for Contractor information in the case of notice to the Contractor.

3.5.2 In the case of notice to HCA:

Attention: Contracts Administrator
Health Care Authority
Division of Legal Services
Post Office Box 42702
Olympia, WA 98504-2702

3.5.3 Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

3.5.4 The notice address and information provided above may be changed by written notice of the change given as provided above.

3.6 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Each of the documents listed below is by this reference incorporated into this Contract. In the event of an inconsistency, the inconsistency will be resolved in the following order of precedence:

3.6.1 Applicable Federal and State of Washington statutes and regulations;

3.6.2 Recitals

3.6.3 Special Terms and Conditions;

3.6.4 General Terms and Conditions;

3.6.5 Attachment 1: Confidential Information Security Requirements;

3.6.6 Attachment 2: Federal Compliance, Certifications and Assurances;

3.6.7 Attachment 3: New Audit Verification Form;

3.6.8 Attachment 4: Contractor Intake Form

3.6.9 Attachment 5: Work Plan

3.6.10 Schedule A: Statement of Work (SOW); and

3.6.11 Any other provision, term or material incorporated herein by reference or otherwise incorporated.

3.7 INSURANCE

Contractor must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Contract, as follows:

- 3.7.1 **Commercial General Liability Insurance Policy** - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1 million per occurrence/\$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- 3.7.2 **Business Automobile Liability**. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- 3.7.3 **Professional Liability Errors and Omissions** – Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.
- 3.7.4 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insured's under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination.
- 3.7.5 Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

- 3.7.6 Privacy Breach Response Coverage. Contractor must maintain insurance to cover costs incurred in connection with a Breach, or potential Breach, including:
- 3.7.6.1 Computer forensics assistance to assess the impact of the Breach or potential Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws.
 - 3.7.6.2 Notification and call center services for individuals affected by a Breach.
 - 3.7.6.3 Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.
 - 3.7.6.4 Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).
- 3.7.7 The policy must be maintained for the term of this Agreement and three (3) years following its termination.

4. GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

4.2 ADVANCE PAYMENT PROHIBITED

No advance payment will be made for services furnished by the Contractor pursuant to this Contract.

4.3 AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4.4 ASSIGNMENT

- 4.4.1 Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in the *Subcontracting Section* of this Contract, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection of the Contract will be null and void.
- 4.4.2 HCA may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.
- 4.4.3 This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

4.5 ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the terms of this Contract, each party agrees to bear its own attorneys' fees and costs.

4.6 CHANGE IN STATUS

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Contractor will notify HCA of the change. Contractor must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

4.7 CONFIDENTIAL INFORMATION PROTECTION

- 4.7.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See Attachment 1: *Confidential Information Security Requirements*).

- 4.7.2 Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 (“ARRA”), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).
- 4.7.3 HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.
- 4.7.4 The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

4.8 CONFIDENTIAL INFORMATION SECURITY

The federal government, including the Centers for Medicare and Medicaid Services (CMS), and the State of Washington all maintain security requirements regarding privacy, data access, and other areas. Contractor is required to comply with the Confidential Information Security Requirements set out in Attachment 1 to this Contract and appropriate portions of the Washington OCIO Security Standard, 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>).

4.9 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

- 4.9.1 Contractor must notify the HCA Privacy Officer (HCAPrivacyOfficer@hca.wa.gov) within five Business Days of discovery of any Breach or suspected Breach of Confidential Information.
- 4.9.2 Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees and taking steps necessary to stop further unauthorized access. Contractor agrees to indemnify and hold HCA harmless for any damages related to unauthorized use or disclosure of Confidential Information by Contractor, its officers, directors, employees, Subcontractors or agents.
- 4.9.3 If notification of the Breach or possible Breach must (in the judgment of HCA) be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:
 - 4.9.3.1 HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS)

Secretary, and to the media, or direct Contractor to make them or any of them.

4.9.3.2 In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).

4.9.3.3 Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.

4.9.4 Any breach of this clause may result in termination of the Contract and the demand for return or disposition (Attachment 1, Section 6) of all Confidential Information.

4.9.5 Contractor's obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any breach or possible breach at any time.

4.10 CONTRACTOR'S PROPRIETARY INFORMATION

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract will be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA will maintain the confidentiality of Contractor's information in its possession that is marked Proprietary. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.

4.11 COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA will have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

4.12 DEBARMENT

By signing this Contract, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred).

Contractor agrees to include the above requirement in any and all subcontracts into which it enters, and also agrees that it will not employ debarred individuals. Contractor must immediately notify HCA if, during the term of this Contract, Contractor becomes debarred. HCA may immediately terminate this Contract by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

4.13 DISPUTES

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be resolved between the parties' Contract Managers, either party may initiate the following dispute resolution process.

4.13.1 The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.

4.13.2 A party's request for a dispute resolution must:

4.13.2.1 Be in writing;

4.13.2.2 Include a written description of the dispute;

4.13.2.3 State the relative positions of the parties and the remedy sought;

4.13.2.4 State the Contract Number and the names and contact information for the parties;

4.13.3 This dispute resolution process constitutes the sole administrative remedy available under this Contract. The parties agree that this resolution process will precede any action in a judicial or quasi-judicial tribunal.

4.14 ENTIRE AGREEMENT

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and

supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 4.43 *Warranties*.

4.15 FORCE MAJEURE

A party will not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

4.16 FUNDING WITHDRAWN, REDUCED OR LIMITED

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this contract but prior to the normal completion of this Contract, then HCA, at its sole discretion, may:

4.16.1 Terminate this Contract pursuant to Section 4.40.3, *Termination for Non-Allocation of Funds*;

4.16.2 Renegotiate the Contract under the revised funding conditions; or

4.16.3 Suspend Contractor's performance under the Contract upon five (5) Business Days' advance written notice to Contractor. HCA will use this option only when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Contract.

4.16.3.1 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

4.16.3.2 When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.

4.16.3.3 If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA

will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

4.17 GOVERNING LAW

This Contract is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Thurston County, Washington. Nothing in this Contract will be construed as a waiver by HCA of the State's immunity under the 11th Amendment to the United States Constitution.

4.18 HCA NETWORK SECURITY

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the contract and other penalties.

Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

4.19 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations under Section 4.7 *Confidential Information Protection* and Section 4.9 *Confidentiality Breach-Required Notification*, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

4.20 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of HCA. Contractor will not hold itself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

4.21 INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Contract, Contractor must provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an

“employer” as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this Contract.

4.22 LEGAL AND REGULATORY COMPLIANCE

4.22.1 During the term of this Contract, Contractor must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.

4.22.2 While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, Internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.

4.22.3 Failure to comply with any provisions of this section may result in Contract termination.

4.23 LIMITATION OF AUTHORITY

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

4.24 NO THIRD-PARTY BENEFICIARIES

HCA and Contractor are the only parties to this contract. Nothing in this Contract gives or is intended to give any benefit of this Contract to any third parties.

4.25 NONDISCRIMINATION

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor’s noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

4.26 OVERPAYMENTS TO CONTRACTOR

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor shall

refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 4.13 *Disputes*.

4.27 PAY EQUITY

4.27.1 Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

4.27.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.

4.27.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.

4.27.4 A "bona fide regional difference in compensation level" must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.

4.27.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA's request for such evidence, HCA may suspend or terminate this Contract.

4.28 PUBLICITY

4.28.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by HCA and must not be so construed by Contractor in any advertising or other publicity materials.

4.28.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Contract or any Service furnished by Contractor in which HCA's name is mentioned, language is used, or Internet links are provided from which the connection of HCA's name with Contractor's Services may, in HCA's judgment, be inferred or implied. Contractor further agrees not to publish or

use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

4.29 RECORDS AND DOCUMENTS REVIEW

4.29.1 The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42)(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].

4.29.2 The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.

4.29.3 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

4.30 REMEDIES NON-EXCLUSIVE

The remedies provided in this Contract are not exclusive, but are in addition to all other remedies available under law.

4.31 RIGHT OF INSPECTION

The Contractor must provide right of access to its facilities to HCA, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

4.32 RIGHTS IN DATA/OWNERSHIP

4.32.1 HCA and Contractor agree that all data and work products (collectively "Work Product") produced pursuant to this Contract will be considered a *work for hire* under the U.S. Copyright Act, 17 U.S.C. §101 *et seq.*, and will be owned by HCA. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software,

databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

- 4.32.2 If for any reason the Work Product would not be considered a *work for hire* under applicable law, Contractor assigns and transfers to HCA, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 4.32.3 Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.
- 4.32.4 Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 4.32.5 Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.
- 4.32.6 Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

4.33 RIGHTS OF STATE AND FEDERAL GOVERNMENTS

In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (CMS), will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for Federal Government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal

Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Contract; (iii) the copyright in any work developed under this Contract; and (iv) any rights of copyright to which Contractor purchases ownership under this Contract.

4.34 SEVERABILITY

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

4.35 SITE SECURITY

While on HCA premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

4.36 SUBCONTRACTING

4.36.1 Neither Contractor, nor any Subcontractors, may enter into subcontracts for any of the work contemplated under this Contract without prior written approval of HCA. HCA has sole discretion to determine whether or not to approve any such subcontract. In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor's duties.

4.36.2 Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.

4.36.3 If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.

4.36.4 The rejection or approval by the HCA of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to HCA.

4.36.5 HCA has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

4.37 SUBRECIPIENT

4.37.1 General

If the Contractor is a subrecipient (as defined in 45 CFR 75.2 and 2 CFR 200.93) of federal awards, then the Contractor, in accordance with 2 CFR 200.501 and 45 CFR 75.501, shall:

- 4.37.1.1 Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
- 4.37.1.2 Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
- 4.37.1.3 Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- 4.37.1.4 Incorporate OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
- 4.37.1.5 Comply with any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any successor or replacement Circular or regulation;
- 4.37.1.6 Comply with the applicable requirements of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, and any successor or replacement Circular or regulation; and
- 4.37.1.7 Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <http://ojp.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)

4.37.2 Single Audit Act Compliance

If the Contractor is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

4.37.2.1 Submit to the Authority contact person the data collection form and reporting package specified in OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;

4.37.2.2 Follow-up and develop corrective action for all audit findings; in accordance with OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, prepare a "Summary Schedule of Prior Audit Findings."

4.37.3 Overpayments

4.37.3.1 If it is determined by HCA, or during the course of a required audit, that Contractor has been paid unallowable costs under this or any Program Agreement, Contractor shall refund the full amount to HCA as provided in Section 4.26 *Overpayments to Contractors*.

4.38 SURVIVAL

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive. In addition, the terms of the sections titled *Confidential Information Protection, Confidential Information Breach – Required Notification, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Rights of State and Federal Governments* will survive the termination of this Contract. The right of HCA to recover any overpayments will also survive the termination of this Contract.

4.39 TAXES

HCA will pay sales or use taxes, if any, imposed on the services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. HCA, as an agency of Washington State government, is exempt from property tax.

Contractor must complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

4.40 TERMINATION

4.40.1 TERMINATION FOR DEFAULT

In the event HCA determines that Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within five (5) Business Days, or other time period agreed to in writing by both parties, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate the Contract.

In the event of termination for default, Contractor will be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

If it is determined that Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a "Termination for Convenience."

4.40.2 TERMINATION FOR CONVENIENCE

When, at HCA's sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ten (10) calendar days' written notice. If this Contract is so terminated, HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.40.3 TERMINATION FOR NONALLOCATION OF FUNDS

If funds are not allocated to continue this Contract in any future period, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such nonallocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.40.4 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in

accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.40.5 TERMINATION FOR CONFLICT OF INTEREST

HCA may terminate this Contract by written notice to the Contractor if HCA determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, HCA will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the contract.

4.41 TERMINATION PROCEDURES

4.41.1 Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract, may require Contractor to deliver to HCA any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.

4.41.2 HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.13 *Disputes*. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.

4.41.3 After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:

- 4.41.3.1 Stop work under the Contract on the date of, and to the extent specified in, the notice;
- 4.41.3.2 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- 4.41.3.3 Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so
- 4.41.3.4 terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- 4.41.3.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification will be final for all the purposes of this clause;
- 4.41.3.6 Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
- 4.41.3.7 Complete performance of any part of the work that was not terminated by HCA; and
- 4.41.3.8 Take such action as may be necessary, or as HCA may direct, for the protection and preservation of the records related to this Contract that are in the possession of the Contractor and in which HCA has or may acquire an interest.

4.42 WAIVER

Waiver of any breach of any term or condition of this Contract will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Contract will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the HCA Authorized Representative has the authority to waive any term or condition of this Contract on behalf of HCA.

4.43 WARRANTIES

- 4.43.1 Contractor represents and warrants that it will perform all services pursuant to this Contract in a professional manner and with high quality and will immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.
- 4.43.2 Contractor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.

4.43.3 Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

Attachment 1

Confidential Information Security Requirements

1. Definitions

In addition to the definitions set out in Section 2 of this Contract the definitions below apply to this Attachment.

- a. "Hardened Password" means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.
 - i. Passwords for external authentication must be a minimum of 10 characters long.
 - ii. Passwords for internal authentication must be a minimum of 8 characters long.
 - iii. Passwords used for system service or service accounts must be a minimum of 20 characters long.
- b. "Portable/Removable Media" means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).
- c. "Portable/Removable Devices" means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC's, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
- d. "Secured Area" means an area to which only Authorized Users have access. Secured Areas may include buildings, rooms, or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
- e. "Transmitting" means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.
- f. "Trusted System(s)" means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

- g. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.

2. Confidential Information Transmitting

- a. When transmitting HCA's Confidential Information electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (<http://csrc.nist.gov/publications/PubsSPs.html>). This includes transmission over the public internet.
- b. When transmitting HCA's Confidential Information via paper documents, the Receiving Party must use a Trusted System.

3. Protection of Confidential Information

The Contractor agrees to store Confidential Information as described:

a. Data at Rest:

- i. Data will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data. Access to the Data will be restricted to Authorized Users through the use of access control lists, a Unique User ID, and a Hardened Password, or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Systems which contain or provide access to Confidential Information must be located in an area that is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

ii. Data stored on Portable/Removable Media or Devices:

- Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.
- HCA's data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:
 1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
 2. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
 3. Keeping devices in locked storage when not in use;
 4. Using check-in/check-out procedures when devices are shared;

5. Maintain an inventory of devices; and

6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.

b. Paper documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

4. Confidential Information Segregation

HCA Confidential Information received under this Contract must be segregated or otherwise distinguishable from non-HCA data. This is to ensure that when no longer needed by the Contractor, all HCA Confidential Information can be identified for return or destruction. It also aids in determining whether HCA Confidential Information has or may have been compromised in the event of a security Breach.

a. The HCA Confidential Information must be kept in one of the following ways:

- i. on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data; or
- ii. in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or
- iii. in a database that will contain only HCA Data; or
- iv. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or
- v. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.

b. When it is not feasible or practical to segregate HCA Confidential Information from non-HCA data, then both the HCA Confidential Information and the non-HCA data with which it is commingled must be protected as described in this Attachment.

5. Confidential Information Shared with Subcontractors

If HCA Confidential Information provided under this Contract is to be shared with a Subcontractor, the contract with the Subcontractor must include all of the Confidential Information Security Requirements.

6. Confidential Information Disposition

When the Confidential Information is no longer needed, except as noted below, the Confidential Information must be returned to HCA or destroyed. Media are to be destroyed using a method documented within NIST 800-88 (<http://csrc.nist.gov/publications/PubsSPs.html>).

- a. For HCA's Confidential Information stored on network disks, deleting unneeded Confidential Information is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 3, above. Destruction of the Confidential Information as outlined in this section of this Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

ATTACHMENT 2

FEDERAL COMPLIANCE, CERTIFICATIONS, AND ASSURANCES

In the event federal funds are included in this agreement, the following sections apply: I. Federal Compliance and II. Standard Federal Assurances and Certifications. In the instance of inclusion of federal funds, the Contractor may be designated as a sub-recipient and the effective date of the amendment shall also be the date at which these requirements go into effect.

- I. **FEDERAL COMPLIANCE** - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. For clarification regarding any of these elements or details specific to the federal funds in this contract, contact: Block Grants for Community Mental Health Services and Substance Abuse Prevention and Treatment Block Grant.
- a. *Source of Funds:* This agreement is being funded partially or in full through Cooperative Agreement number #: **6B09SM010056-18M002** and **3B08TI010056-18**, the full and complete terms and provisions of which are hereby incorporated into this agreement. Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.958** and **93.959** and amount \$50,000 . The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA Contract No. K3682.
 - b. *Period of Availability of Funds:* Pursuant to 45 CFR 92.23, Sub-awardee may charge to the award only costs resulting from obligations of the funding period specified in **6B09SM010056-18M002** and **3B08TI010056-18**, unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.
 - c. *Single Audit Act:* A sub-awardee (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Super Circular 2 CFR 200.501 and 45 CFR 75.501. A sub-awardee who expends \$750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501.
 - d. *Modifications:* This agreement may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.
 - 1. Examples of items requiring Health Care Authority prior written approval include, but are not limited to, the following:
 - i. Deviations from the budget and Project plan.
 - ii. Change in scope or objective of the agreement.
 - iii. Change in a key person specified in the agreement.
 - iv. The absence for more than three months or a 25% reduction in time by the Project Manager/Director.
 - v. Need for additional funding.
 - vi. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
 - vii. Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this agreement.
 - 2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from the Health Care Authority.

- e. **Sub-Contracting:** The sub-awardee shall not enter into a sub-contract for any of the work performed under this agreement without obtaining the prior written approval of the Health Care Authority. If sub-contractors are approved by the Health Care Authority, the subcontract, shall contain, at a minimum, sections of the agreement pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other project Federal, state, and local requirements.
- f. **Condition for Receipt of Health Care Authority Funds:** Funds provided by Health Care Authority to the sub-awardee under this agreement may not be used by the sub-awardee as a match or cost-sharing provision to secure other federal monies without prior written approval by the Health Care Authority.
- g. **Unallowable Costs:** The sub-awardees' expenditures shall be subject to reduction for amounts included in any invoice or prior payment made which determined by HCA not to constitute allowable costs on the basis of audits, reviews, or monitoring of this agreement.
- h. **Citizenship/Alien Verification/Determination:** The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.
- i. **Federal Compliance:** The sub-awardee shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this agreement, whether included specifically in this agreement or not.
- j. **Civil Rights and Non-Discrimination Obligations** During the performance of this agreement, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.) <http://www.hhs.gov/ocr/civilrights>

HCA Federal Compliance Contact Information

Federal Grants and Budget Specialist
 Health Care Policy
 Washington State Health Care Authority
 Post Office Box 42710
 Olympia, Washington 98504-2710

- I. **CIRCULARS 'COMPLIANCE MATRIX'** - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Washington State Health Care Authority (HCA), as the primary recipient of federal funds and then follow the funds to the sub-awardee City of Mercer Island Youth and Family Services. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

II.

ENTITY TYPE	OMB CIRCULAR		
	ADMINISTRATIVE REQUIREMENTS	COST PRINCIPLES	AUDIT REQUIREMENTS

State, Local and Indian Tribal Governments and Governmental Hospitals	OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501
Non-Profit Organizations and Non-Profit Hospitals	
Colleges or Universities and Affiliated Hospitals	
For-Profit Organizations	

Definitions:

"Sub-recipient"; means the legal entity to which a sub-award is made and which is accountable to the State for the use of the funds provided in carrying out a portion of the State's programmatic effort under a sponsored project. The term may include institutions of higher education, for-profit corporations or non-U.S. Based entities.

"Sub-award and Sub-grant" are used interchangeably and mean a lower tier award of financial support from a prime awardee (e.g., Washington State Health Care Authority) to a Sub-recipient for the performance of a substantive portion of the program. These requirements do not apply to the procurement of goods and services for the benefit of the Washington State Health Care Authority.

IV. STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington State Health Care Authority.

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
- b) have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

- d) have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the contractor not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

- b) Establishing an ongoing drug-free awareness program to inform employees about
 - (1) The dangers of drug abuse in the workplace;
 - (2) The contractor's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a) above;
- d) Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the contract, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- e) Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted—
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug

abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

- g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, Authority has designated the following central point for receipt of such notices:

Legal Services Manager
 WA State Health Care Authority
 PO Box 42700
 Olympia, WA 98504-2700

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal

loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the

Public Health Service terms and conditions of award if a contract is awarded.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all sub-recipients shall certify accordingly.

The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS INSTRUCTIONS FOR CERTIFICATION

- 1) By signing and submitting this proposal, the prospective contractor is providing the certification set out below.
- 2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- 4) The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.
- 6) The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or

voluntarily excluded from participation in this covered transaction, unless authorized by Authority.

- 7) The prospective contractor further agrees by submitting this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (of excluded parties).
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, Authority may terminate this transaction for cause or default.


7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

- 1) The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:
 - a) Are not presently debarred, suspended, proposed for debarment, declared

- ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- d) Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2) Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this proposal.

CONTRACTOR SIGNATURE REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE <i>Interim City Manager</i>
Please also print or type name: <i>Jessi Bon</i>	
ORGANIZATION NAME: (if applicable) <i>City of Mercer Island</i>	DATE <i>10/10/19</i>

ATTACHMENT 3



STATE OF WASHINGTON
HEALTH CARE AUTHORITY
Budget and Finance
PO Box 45330, Olympia, WA 98504-5330

NEW Contract - Audit Verification Form

Hca has determined that the Contract you will be entering into with the Health Care Authority (HCA) is supported by federal funds. Therefore, HCA is responsible for determining compliance with the requirements in Omni Circular 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. In order to make this determination you are required to complete the information below.

To ensure your organization is in compliance with the audit requirements, please attach this form and your recent audit (if applicable) within the next 15 days. We are unable to contract with you until this is completed.

If you have questions, concerns or need additional information regarding the Single Audit, please do not hesitate to call Hector Garcia at (360) 725-3777 or hector.garcia@hca.wa.gov.

If you have questions, concerns or need additional information regarding the form, please contact dbhrcontracts@dshs.wa.gov.

As a pass-through agency of federal grant funds, the Washington State Health Care Authority (HCA) is required by Office Management and Budget (OMB) Circular A-133/Single Audit and 2 CFR 200 to monitor activities of subrecipients to ensure federal awards are used for authorized purposes and ensure that subrecipients have met the OMB Circular A-133 Single Audit Requirements. Depending on the amount of your total federally funded projects per fiscal year, your organization may be a subrecipient subject to such monitoring by HCA.

For audits of fiscal years beginning after December 26, 2014, Contractors expending \$750,000 or more in any fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with 2 CFR §200.501 – Audit Requirements.

Please complete appropriate section, provide additional documents as applicable, sign and return within the next 15 days to your HCA Program Manager.

Contractor Name: City of Mercer Island YFS Statewide Vendor No. (SWV#): SWV 0032384-00
Fiscal Year: 2019 Fiscal Year Start Date: 1/1/19 Fiscal Year End Date: 12/31/19

- 1. [X] We are not subject to the audit requirements of the Federal Audit Requirements because:
[X] We did not expend \$750,000 (for fiscal year beginning after December 26, 2014) or more of total federal awards during the last fiscal year.
[] We are a for-profit agency.
[] We are exempt for other reasons (if this box is marked, a reason must be entered):
2. [] We are subject to the requirement of the Federal Audit Requirements.
[] We completed our last federally compliant audit and have attached.
[] Our completed federally compliant audit will be available on:

Contractor Authorized Official Name/Title - PRINT:

Contractor Authorized Official SIGNATURE:



Date: 6/10/19

Send this form and copy of audit (if required) to the HCA Program Manager who initiated the request.

**ATTACHMENT 4
Contractor Intake Form**

1 – Identifying Information

A) Contractor Legal Name: City of Mercer Island Youth Family	B) DBA or Facility Name:
C) WA Uniform Business Identifier (UBI) Number: 179019640	D) Taxpayer Identification Number (TIN): 19160117561A1
E) State Wide Vendor Number (SWV#): SWV 0032386-00	F) DUNS Number: 0563076970000

2 – Contractor Address

A) Number, Street, Apartment/Suite: 2040 84 th Ave SE	
B) City, State, Zip Code+4: Mercer Island, WA 98040	
C) Email Address: cindy.goodwin@mercergov.org	D) Phone Number: () - 206-275-7411

3 – Contractor/Vendor Primary Contact

A) Full Name: Cynthia Goodwin	B) Job Title: Director
C) Email Address: cindy.goodwin@mercergov.org	D) Phone Number: () - 206-275-7411
Authorized to Sign Contracts? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If 'no' selected – Section Four (4) is REQUIRED	

4 – Contractor/Vendor Primary Signatory

A) Full Name:	B) Job Title:
C) Email Address:	D) Phone Number: () -

5 – Additional Contractor/Vendor Staff to be Notified

A) Full Name: Derek Franklin	B) Email Address: derek.franklin@mercergov.org
C) Full Name: Tambi Crnk	D) Email Address: tambi.crnk@mercergov.org

6 – Contract Information

A) Contract Number: K3682	B) Exact Start Date: [Date or DOE] 5/1/19	C) Exact End Date (this contract/work order/amendment ONLY): 10/31/19
D) Funding Amount (this contract/work order/amendment ONLY): 50,000		E) Funding Amount (ALL amendments included): 50,000
F) Additional Instructions:		

Completed By: [Name] Tambi Crnk Date: [Date] 5/28/19

Schedule A SOW
Trauma Informed Approaches (TIA) Services
May 1, 2019 – October 31, 2019

The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of the work set out below:

- 1.1 Deliverable 1: Implementation of Trauma Informed Approach work. The Contractor shall complete objectives as outlined in their agreed work plan (Attachment 5) that was submitted to HCA. The Contractor shall submit the following to support the work they will complete:
 - 1.1.1 Completed agency scan tool.
 - 1.1.2 Work plan with the following elements:
 - 1.1.2.1 Clear goal of the work plan;
 - 1.1.2.2 Measurable objectives with clearly defined activities to achieve objectives;
 - 1.1.2.3 Clearly defined budgets for the activities;
 - 1.1.2.4 Identify whether the work plan is a plan to start TIA or is a continuation of work; and
 - 1.1.2.5 Signed by representatives from partner and Contractor.
 - 1.1.3 Information about the chosen Contractor's partner per Exhibit D of RFA 3591 Transformation Enhancement Grant.
 - 1.1.4 Deliverable 1 Pay Point: The Contractor shall receive payment of \$16,666 upon receipt and approval of all documentation.
- 1.2 Deliverable 2: The Contractor shall submit a written progress report containing at least 500 words to the HCA Contract Manager listed on page ten (10) of this contract no later than **June 30th, 2019**, detailing the following:
 - 1.2.1 A summary of work completed up to the time of writing of report.
 - 1.2.2 A narrative of challenges encountered during the work and lessons learned.
 - 1.2.3 Deliverable 2 Pay Point: The contractor shall receive payment of \$16,666 upon timely delivery and approval of the progress report.
- 1.3 Deliverable 3: The Contractor shall submit the following written reports:
 - 1.3.1 A written progress report containing at least 500 words to the HCA Contract Manager listed on page ten (10) of this contract no later than **August 30th, 2019**, detailing the following:
 - 1.3.1.1 A summary of work completed up to the time of writing of report.
 - 1.3.1.2 A narrative of challenges encountered during the work and lessons learned.

1.3.2 A final written report including an executive summary to the HCA Contract Manager listed on page ten (10) of this contract no later than **October 31st, 2019**, detailing the following:

1.3.2.1 A copy of the updated and completed scan tool. This will be the same tool used previously to develop the original work plan. A discussion of the changes from the original scan to the current ones and how work completed in the work plan contributed to this.

1.3.2.2 A detailed summary of how work was completed and how objectives were obtained and if they were not why.

1.3.2.3 A summary of lessons learned while completing work related to TIA.

1.3.2.4 A discussion of future goals for TIA implementation in your organization and the community.

1.3.2.5 Deliverable 3 Pay Point: The contractor shall receive payment of \$16,668 upon timely delivery and approval of the progress report.

Mercer Island Youth and Family Services TIA Work Plan

GOAL: Implement all aspects of Trauma Informed Activities (TIA) pursuant to HCA RFA #3591 grant proposal

OBJECTIVE 1: Identify level of TIA compliance at Mercer Island Youth and Family Services

Strategy 1.1: Implement SCAN TOOL "Trauma Informed Organizational Self-Assessment" (Fallot & Harris)

Activity	Review Dates			Budget
	Start	Checkpoint	End	
Administer Trauma Informed Organizational Self-Assessment SCAN TOOL at Mercer Island Youth and Family Services (MIYFS) to all staff (pre-test): Community-based, School-based and Administrative. Collect and analyze data.	5/23/19	6/15/19	7/1/19	Staff Time: Project Coordinator \$1,500; Admin Support \$250
Create and distribute report on SCAN TOOL findings, cross reference 2019 Mercer Island Community Needs Assessment (MICNA)	6/15/19	6/30/19	7/15/19	Staff Time: Project Coordinator \$500
Administer Trauma Informed Organizational Self-Assessment SCAN TOOL at Mercer Island Youth and Family Services (MIYFS) to all staff (post-test): Collect and analyze data.	9/1/19	9/15/19	9/25/19	Staff time: Project Coordinator \$1,500
			Total	\$3,750

OBJECTIVE 2: Modify MIYFS Policies and Procedures to incorporate TIA principles

Strategy 2.1: Implement TIA policies and procedures at MIYFS for direct services, administrative, and Thrift Store functions using SCAN TOOL results and SAMHSA TIPS 57

Activity	Review Dates			Budget
	Start	Checkpoint	End	
Implement recommendations from SCAN TOOL finding and report. Implementation includes written policies, physical structure, supplies for counselors and physical space, TIA-informed counseling tools, and review of clinical documents and forms. Implementation domains include Governance and Leadership (MIYFS and MIYFS Foundation Board), Policy, Physical Environment, Engagement and Involvement (of community members), Cross Sector Collaboration (Youth Concerns meeting with multiple sectors), Training and Workforce	5/25/19	7/15/19	8/15/19	Staff Time: Project Coordinator \$11,200 (\$70/hr x 16hrs/ week x 10 weeks) MIYFS School Staff Contracted (Summer) \$3,360 (\$70/hr

Development, Screening/ Assessment/ Treatment Services, Progress Monitoring and Q/A, Financial Systems (City of MI) and Evaluation Practices.				x 4 hrs/week x 12 weeks) Clinical staff contract hours \$2,240 (non-summer) Admin Staff Assistant: \$750 TIA supplies for office, counselors (** see addendum) \$7,113
			Total	\$24,663

OBJECTIVE 3: MIYFS Outpatient and School-based counselors will practice using TIA principles

Strategy 3.1: *Train MIYFS Outpatient and School-based staff in TIA*

Activity	Review Dates			Budget
	Start	Checkpoint	End	
Training MIYFS outpatient clinical staff on TIA practices and trauma-informed mental health care. (on-line or hire in-service trainer)	6/1/19	6/15/19	7/1/19	\$499/ staff trained x 13 clinical staff = \$6,487
			Total	\$6,487

OBJECTIVE 4: Apply TIA principles to Chinese, Korean and LBGTO+ interface with MIYFS services

Strategy 4.1: *Review and modify TIA practices at MIYFS specific to cultural competency principles and high needs populations: Chinese, Korean and LBGTO+ communities*

Activity	Review Dates			Budget
	Start	Checkpoint	End	
Outreach and community meeting with leaders from the Chinese, Korean and LBGTO+ community leaders (one each) to introduce and present TIA principles and modifications to MIYFS P&P to accommodate and serve needs of these populations.	5/25/19	7/1/19	9/15/19	Staff time: Project Coordinator \$1,400 (\$70/hr x 20 hrs) Admin Asst. Staff: \$100
			Total	\$1,500

OBJECTIVE 5: Introduce TIA principles to City of Mercer Island Leadership

Strategy 5.1: *Orient and train City of Mercer Island leadership to TIA principles*

Activity	Review Dates			Budget
	Start	Checkpoint	End	
Present SCAN TOOL finding to City of Mercer Island Expanded Management Team. Provide training on future implementation of SCAN TOOL at City of Mercer Island. (Includes Police, Fire, City Management, IT, City Attorney, Parks and Recreation)	8/1/19	8/15/19	9/1/19	Staff time: Project Coordinator \$420 (\$70/hr x 6 hrs)
Present TIA to Mercer Island Community Center staff and present SCAN TOOL for possible future implementation.	8/1/19	8/15/19	9/1/19	Staff time: Project Coordinator \$420 (\$70/hr x 6 hrs)
			Total	\$840

OBJECTIVE 6: Introduce TIA principles to MIYFS school district

Strategy 6.1: *Implement TIA principles in schools counselor settings in six Mercer Island School District Schools: Mercer Island High School, Islander Middle School, Lakeridge Elementary School, Island Park Elementary School, West Mercer Elementary School, Northridge Elementary School*

Activity	Review Dates			Budget
	Start	Checkpoint	End	
Train school counselors in school-specific TIA implementation (trainings in six schoolhouses; co-assessment of counseling office spaces; overview of school-based curriculum with TIA lens)	8/25/19	9/12/19	9/20/19	Staff Time: Project Coordinator \$3,360 (\$70/hr x 8 hours x 6 schools)
			Total	\$3,360

Strategy 6.2: *Provide in-service training to select Mercer Island School District administrators, schoolhouse leaders and staff*

Activity	Review Dates			Budget
	Start	Checkpoint	End	
Provide in-service training to Mercer Island School District Administration, behavioral support and counseling teams, and special education instructors, including orientation to SCAN TOOL for future implementation in the schools	9/1/19	9/15/19	9/28/19	Staff Time: Project Coordinator \$700 (\$70/hour x 10 hours)
			Total	\$700

OBJECTIVE 7: Introduce Mercer Island parents and youth serving professionals to TIA principles

Strategy 8.1: *Host TIA Town Hall Meeting for Mercer Island parents and youth-serving professionals*

Activity	Review Dates			Budget
	Start	Checkpoint	End	

Host one Town Hall Meeting on Trauma Informed Approaches in partnership with members of the community with lived trauma experience; include Keynote Speaker with professional TIA background, administer pre/post event survey.	9/1/19	9/15/19	9/28/19	Staff Time: Project Coordinator \$1,400 (\$70/hr x 20 hours) Guest Speaker fee, travel, supplies \$3,000 Conference Room Rental Mercer Island Community Center 6 hours \$1,800 Admin Assist Staff: \$500
			Total	\$6,700

Strategy 8.2: Use local media to share TIA information, results of Town Hall event

Activity	Review Dates			Budget
	Start	Checkpoint	End	
Share survey results from Town Hall and information of TIA implementation at MIYFS and Schools on local media: MIHS Radio, Mercer Island Reporter, City of Mercer Island Newsletter, social media (and push)	9/1/19	9/15/19	9/27/19	Staff Time: Project Coordinator \$500 Media Buys: Radio, Newspaper \$1,000 (one-month daily run) Social media push on MIYFS Facebook \$500
			Total	\$2,000
			Project Total	\$50,000

****Objective 2 Budget Details ADDENDUM:**

- Developmentally Appropriate Books
- Weighted Stuffedies
- Weighted Blankets
- Noise Cancelling Headphones
- Meditation Aps for Counselor Phones
- "Art with Heart" Supplies

Biofeedback Computer Games/Aps for youth
Office Plants
Therapy office painting
Full spectrum lighting for counseling offices
S.A.D. full spectrum lights for counselors/service providers
TIA aligned games, puppets, posters, books
PTSD books for youth

Partnership Organizations

(1)

Organization:

City of Mercer Island, Washington
9611 SE 36th Street
Mercer Island, WA 98040

Representative:

Cynthia Goodwin, Director
Email: cynthia.goodwin@mercergov.org
Phone: (206) 275-7749

 5-20-19

Signature Date

(2)

Organization:

Mercer Island School District
4160 86th Ave SE
Mercer Island, WA 98040
(206) 236-3330

Representative:

Fred Rundle, Assistant Superintendent of Learning Services
4160 86th Ave SE
Mercer Island, WA 98040
(206) 236-5636

 _____
Signature Date

May 17, 2019 _____
Date



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND, WA**

**AB 5565
June 18, 2019
Public Hearing**

INTERIM DESIGN AND CONCEALMENT STANDARDS FOR SMALL CELL FACILITIES DEPLOYMENT ORDINANCE (EXTENSION AND ADOPTION)	Action: Conduct public hearing and adopt Ordinance No. 19-10	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
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DEPARTMENT OF	Community Planning and Development (Evan Maxim)
COUNCIL LIAISON	n/a
EXHIBITS	1. Ordinance No. 19C-02 2. Ordinance No. 19-10
2019-2020 CITY COUNCIL PRIORITY	3. Support the Leadership Team’s Work Plan
APPROVED BY CITY MANAGER	

AMOUNT OF EXPENDITURE	\$	n/a
AMOUNT BUDGETED	\$	n/a
APPROPRIATION REQUIRED	\$	n/a

SUMMARY

BACKGROUND

On January 15, 2019, the City Council unanimously passed Emergency Ordinance No. 19C-02 (see Exhibit 1), establishing Interim Design and Concealment Standards for Small Cell Facilities deployments. The emergency ordinance was adopted in response to the Federal Communications Commission’s (FCC) issuance of a “Declaratory Ruling and Third Report and Order” (“New Rules”) related to the deployment of small cell facilities, which became effective January 14, 2019. The New Rules resulted in significant changes to the approach the City must use to regulate small cell deployment, which were described in [AB 5526](#).

On March 5, 2019, the City Council (see [AB 5538](#)) conducted a public hearing in compliance with RCW 35A.63.220 and 36.70A.390. Public testimony included verbal comments from representatives of Crown Castle and Verizon, and written comment from members of the Mercer Island community.

Ordinance No. 19C-02 will expire on July 15, 2019, six months after adoption, unless extended by the City Council following a public hearing.

CURRENT SMALL CELL APPLICATIONS

On May 16, 2019 the City received applications for more than 40 small cell antennas; the applications were submitted by Crown Castle (WA-CLEC, LLC) on behalf of Verizon Wireless. The small cell antennas are distributed across the Island and are more densely placed near East and West Mercer Ways. Public notification was provided by the City on June 3, 2019, with additional information posted on the City's LetsTalk website (<https://letstalk.mercergov.org/small-cells>) and in the MI Weekly. These applications are currently under review and are subject to the small cell design requirements contained in Ordinance No. 19C-02.

WORK PLAN

Adoption of permanent design and concealment standards for small cell facilities deployment will require review, a public hearing, and a recommendation by the Planning Commission prior to City Council action. The Planning Commission's schedule is currently significantly encumbered with the development of the Community Facilities zoning regulations and the 2019 Comprehensive Plan amendments. Based upon the Planning Commission's current work plan and schedule, staff anticipates initiating a review of the small cell regulations in November 2019, with a Planning Commission recommendation to City Council tentatively occurring in early 2020.

Until permanent design and concealment standards are adopted, staff recommends that the effective period of the Interim Design and Concealment Standards for Deployment of Small Cell Facilities adopted by Ordinance No. 19C-02 be renewed for another six-month period.

RECOMMENDATION

Community Planning and Development Director

Conduct public hearing and consider public testimony.

- MOVE TO:
1. Suspend the City Council Rules of Procedure 6.3, requiring a second reading of an ordinance.
 2. Adopt Ordinance No. 19-10, extending the Interim Design and Concealment Standards for Small Cell Facilities deployment established under Ordinance No. 19C-02.

**CITY OF MERCER ISLAND
ORDINANCE NO. 19C-02**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
DECLARING AN EMERGENCY; ADOPTING INTERIM DESIGN AND
CONCEALMENT STANDARDS FOR SMALL CELL FACILITIES
DEPLOYMENT; PROVIDING FOR A PUBLIC HEARING; AND ESTABLISHING
AN IMMEDIATE EFFECTIVE DATE.**

WHEREAS, the Federal Communications Commission issued a Declaratory Ruling and Third Report and Order (“New Rules”) relating to small cell facilities, which became effective January 14, 2019; and

WHEREAS, the New Rules significantly preempt the City’s ability to regulate the installation of small cell facilities on City-owned public rights-of-way; and

WHEREAS, aesthetic requirements imposed by the City under the New Rules on installation of small cell facilities must be published in advance and must also be reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective; and

WHEREAS, the City does not have design and concealment standards adopted for deployment of small cell facilities currently; and

WHEREAS, without adopted standards, the City may not impose design and concealment standards on applications for the deployment of small cell facilities under the New Rules; and

WHEREAS, the City Council finds that deployment of small cell facilities with unregulated design and concealment standards may result in uncoordinated installations, visual blight, interference with public facilities and equipment, and traffic dangers that pose harm to public health, safety, property, and welfare; and

WHEREAS, to prevent the potential harm to public health, safety, property, and welfare, the City Council concludes that the City immediately needs interim design and concealment standards for deployment of small cell facilities until permanent standards can be adopted following the process and procedures for adopting development regulations; and

WHEREAS, the City is authorized under RCW 35A.63.220, 36.70A.390 to pass an interim zoning and official control ordinance for up to six months, provided it holds a public hearing on the same within sixty days after passage; and

WHEREAS, consistent with the provisions of RCW 35A.63.220 and RCW 36.70A.390, it is appropriate for the City Council to hold a public hearing and adopt findings of fact supporting and justifying the interim zoning and official control ordinance within at least sixty days of its passage;
NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

- Section 1. Whereas Clauses Adopted.** The “Whereas Clauses” set forth in the recital of this Ordinance are hereby adopted as the preliminary findings and conclusions of the City Council for passing this Ordinance.
- Section 2. Declaration of Emergency.** As set forth in the “Whereas Clauses” adopted in Section 1 of this Ordinance, the City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon unanimous passage by the whole membership of the City Council, and that the same is not subject to a referendum (RCW 35A.11.090(2)) and is exempt from SEPA review (WAC 197-11-880 and MICC 19.07.120(D)).
- Section 3. Interim Standards Adopted.** Interim Design and Concealment Standards for Deployment of Small Cell Facilities are hereby adopted as set forth in Exhibit A to this Ordinance.
- Section 4. Public Hearing.** Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall be scheduled for 7:00 p.m. on March 5, 2019, which is within 60 days of this Ordinance passage, at Mercer Island City Hall, 9611 SE 36th Street, during the City Council’s regular meeting, or as soon thereafter as the business of the City Council shall permit, in order to hear and consider the comments and testimony of those wishing to speak at such public hearing regarding the interim standards imposed by this Ordinance and to consider adopting further findings of fact if needed.
- Section 5. Duration of Interim Standards.** The Interim Design and Concealment Standards for Deployment of Small Cell Facilities approved by this Ordinance shall become effective immediately, on the date hereof, and shall continue in effect for an initial period of six months, unless repealed, extended or modified by the City Council after subsequent public hearing(s), entry of appropriate findings of fact, and or development of a work plan for related studies pursuant to RCW 35A.63.220 and RCW 36.70A.390.
- Section 6. Severability.** If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this Ordinance or its application to any other person, property or circumstance.
- Section 7. Effective Date.** This Ordinance, as a public emergency ordinance necessary for the protection of the public health, safety, property, and welfare, shall take effect and be in full force and effect immediately upon its unanimous passage by the entire membership of the City Council as required by RCW 35A.11.090(2) and 35A.13.190.

Passed unanimously by the City Council of the City of Mercer Island, Washington, at its regular meeting on the 15th day of January 2019 and signed in authentication of its passage.

CITY OF MERCER ISLAND




Debbie Bertlin, Mayor

Approved as to Form:



Kari L. Sand, City Attorney

ATTEST:



Deborah A. Estrada, City Clerk

Date of Publication: 1/23/2019

DRAFT
Code Amendments
Small Cell Facilities Design and Concealment Interim Standards

1
2
3
4
5 **GENERAL REGULATIONS**

6 19.06.070 Small Cell Deployment.

7 19.06.075 Small Cell Deployments – Design and Concealment Standards.

8
9 **DEFINITIONS**

10 19.15.030 Land Use Review Types.

11
12 **DEFINITIONS**

13 19.16.010 Definitions.

14
15 "Normal Text" is existing code language

16 "~~Strikethrough Text~~" is existing code language that will be deleted

17 "Underline Text" is new code language that will be added

18 "... " represents that existing code language is omitted and will not be amended

19

1 **19.06.070 ~~Bonding and insurance~~ Small cell facilities deployment.**

2 The following provisions establish standards for small cell facilities deployments; provided, however,
3 that any small cell or small cell network component which is not exempt from SEPA review shall also
4 comply with chapter 19.07 MICC:

5 (1) Small Cell Facility Approval Required. Small cell facilities are permitted in all zoning
6 designations subject to a Type II land use review process pursuant to chapter 19.15 MICC. In
7 addition to the small cell approval, one or more right-of-way use permits may also be required
8 for small cell deployment.

9 (2) Previously Approved Small Cells on Existing or Replacement Utility Poles. Eligible small cell
10 facilities permitted under the provisions of a franchise approval prior to the adoption of these
11 standards shall be considered to have satisfied the design and concealment standards when
12 installed and maintained in accordance with the franchise agreement.

13 (3) Replacement Utility Pole – Street Lighting. With the express permission of the City, a
14 replacement utility pole or a new utility pole may be permitted in the form of a new street light
15 standard. The design of the street light standard shall be in accordance with the City lighting
16 requirements in effect at the time of application. Wherever technologically feasible, all
17 equipment and cabling shall be internal to the replacement street lighting standard, or
18 concealed through the design and implementation of a concealment plan.

19 (4) Undergrounded Utility Areas. A service provider or infrastructure company desiring to locate
20 any aboveground infrastructure in an undergrounded utility area shall provide a separate,
21 standalone pole. Pole design to be approved by the City pursuant to MICC 19.06.075(6)(d).

22
23 **19.06.075 Small Cell Deployments – Design and concealment standards.**

24 Small cell deployments, whether permitted on the right-of-way pursuant to a franchise or in accordance
25 with this chapter, shall conform to the design standards set forth in this section.

26 (1) Small Cell Deployment Design Standards - General Requirements. All small cell deployments
27 shall comply with the following provisions:

28 (a) Ground-mounted equipment in the rights-of-way is prohibited unless such facilities
29 are placed underground or the applicant can demonstrate that pole-mounted or
30 undergrounded equipment is technically infeasible. If ground-mounted equipment is
31 necessary, then the applicant shall submit a concealment plan pursuant to subsection
32 (7). Generators located in the rights-of-way are prohibited.

33 (b) No equipment shall be operated so as to produce noise in violation of chapter 8.24
34 MICC.

35 (c) Small cell facilities are not permitted on traffic signal poles.

1 (d) Replacement poles and new poles shall comply with the Americans with Disabilities
2 Act (ADA), City construction and sidewalk clearance standards, and state and federal
3 regulations in order to provide a clear and safe passage within the rights-of-way.

4 (e) Replacement poles shall be located as near as possible subject to approval by the
5 City Engineer to the existing pole with the requirement to remove the abandoned pole.

6 (f) No signage, message or identification other than the manufacturer's identification or
7 identification required by governing law is allowed to be portrayed on any antenna, and
8 any such signage on equipment enclosures shall be of the minimum amount possible to
9 achieve the intended purpose; provided, that signs are permitted as concealment
10 element techniques where appropriate.

11 (g) Antennas and related equipment shall not be illuminated except for security reasons,
12 required by a federal or state authority, or unless approved as part of a concealment
13 plan.

14 (h) Side arm mounts for antennas or equipment are prohibited.

15 (i) The preferred location of a small cell facility on a pole is the location with the least
16 visible impact.

17 (j) Antennas, equipment enclosures, and ancillary equipment, conduit and cable shall be
18 located within the building or pole to the maximum extent feasible.

19 (k) Antennas, equipment enclosures and ancillary equipment, conduit and cable shall
20 not adversely affect the aesthetic appearance or visual character of the building or pole
21 upon which they are attached.

22 (l) The City may consider the cumulative visual effects of small cells mounted on poles,
23 together with existing utility equipment, within the rights-of-way when assessing
24 proposed siting locations so as to not adversely affect the visual character of the City.
25 This provision shall not be applied to limit the number of permits issued when no
26 alternative sites are reasonably available nor to impose a technological requirement on
27 the service provider.

28 (m) The design criteria as applicable to small cell facilities described herein shall be
29 considered concealment elements and such small cell facilities may only be expanded
30 upon an eligible facilities request described in chapter 19.06 MICC, when the
31 modification does not defeat the concealment elements of the facility.

32 (2) Small Cell Facilities Attached to Nonwooden Poles. Small cell facilities attached to existing or
33 replacement nonwooden light poles and other nonwooden poles in the right-of-way or poles
34 outside of the right-of-way shall conform to the following design criteria in addition to the
35 General Requirements set forth in subsection (1) above:

36 (a) Antennas and the associated equipment enclosures shall be sited and installed in a
37 manner which minimizes the visual impact on the streetscape either by either:

1 i. Fully concealing the antennas and associated equipment fully within the pole;
2 or,

3 ii. Through a concealment plan which provides an equivalent or greater impact
4 reduction pursuant to subsection (7), below.

5 (b) All conduit, cables, wires and fiber must be routed internally in the light pole.
6 Conduit, cables, wires and fiber extending outside the pole to connect with externally
7 mounted antennas or equipment shall be located within shrouds, canisters, or sleeves.

8 (c) An antenna on top of an existing pole may not extend more than six feet above the
9 height of the existing pole and the diameter may not exceed 16 inches, measured at the
10 top of the pole, unless the applicant can demonstrate that more space is needed. The
11 antennas shall be integrated into the pole design so that they appear as a continuation
12 of the original pole, including colored, powder coated, or other permanent coloration,
13 to match the pole, and shall be shrouded or screened to blend with the pole. All cabling
14 and mounting hardware/brackets from the bottom of the antenna to the top of the pole
15 shall be fully concealed and integrated with the pole.

16 (d) In addition to the increased antenna height allowed in subsection (c) above, the
17 height of any replacement pole may not extend more than 10 feet above the height of
18 the existing pole or the minimum additional height necessary for adequate clearance
19 from electrical wires, whichever is greater.

20 (e) Any replacement nonwooden pole shall substantially conform to the design of the
21 pole it is replacing, or the applicable City pole design standards.

22 (f) The diameter of a replacement pole shall comply with applicable setback and
23 sidewalk clearance requirements, ADA requirements, and if a replacement light
24 standard then with the City's lighting requirements.

25 (g) The use of the pole for the siting of a small cell facility shall be considered secondary
26 to the primary function of the pole. If the primary function of a pole serving as the host
27 site for a small cell facility becomes unnecessary, the pole shall not be retained for the
28 sole purpose of accommodating the small cell facility and the small cell facility and all
29 associated equipment shall be removed.

30 (3) Wooden Pole Design Standards. Small cell facilities located on wooden poles shall conform to
31 the following design criteria in addition to the General Requirements set forth in subsection (1)
32 above:

33 (a) The wooden pole at the proposed location may be replaced with a taller pole for the
34 purpose of accommodating a small cell facility; provided, that the replacement pole
35 shall not exceed a height that is a maximum of 10 feet taller than the existing pole,
36 unless a further height increase is required and confirmed in writing by the pole owner
37 and that such height extension is the minimum extension possible to provide sufficient
38 separation and/or clearance from electrical and wireline facilities.

1 (b) A pole extender may be used instead of replacing an existing pole but may not
2 increase the height of the existing pole by more than 10 feet unless a further height
3 increase is required and confirmed in writing by the pole owner and such height
4 increase is the minimum extension possible to provide sufficient separation and/or
5 clearance from electrical and wireline facilities. The pole extender shall be painted to
6 approximately match the color of the pole and shall substantially match the diameter of
7 the pole measured at the top of the pole.

8 (c) Replacement wooden poles may either match the approximate color and materials
9 of the replaced pole or shall be the standard new wooden pole used by the pole owner
10 in the City.

11 (d) Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit
12 shall be colored, powder coated, or other permanent coloration, to match the
13 approximate color of the surface of the wooden pole on which they are attached.

14 (e) Panel antennas shall not be mounted on the side of a pole more than 12 inches from
15 the surface of the wooden pole, measured from the exterior surface of the pole to the
16 furthest extent of the panel antenna.

17 (f) Antennas should be placed in an effort to minimize visual clutter and obtrusiveness.
18 Multiple antennas are permitted on a wooden pole; provided, that each antenna
19 enclosure shall not be more than three cubic feet in volume, with a cumulative total
20 antenna volume not to exceed 12 cubic feet.

21 (g) In addition to the increased antenna height allowed in subsection (b) above, a
22 canister antenna may be mounted on top of an existing wooden pole, which may not
23 exceed the height requirements described in subsection (3)(a) of this section. A canister
24 antenna mounted on the top of a wooden pole shall not exceed 16 inches, measured at
25 the top of the pole, and shall be colored or painted to match the pole. The canister
26 antenna must be placed to look as if it is an extension of the pole. In the alternative, the
27 applicant may propose a side-mounted canister antenna, so long as the inside edge of
28 the antenna is no more than 12 inches from the surface of the wooden pole. All cables
29 shall be concealed either within the canister antenna or within a sleeve between the
30 antenna and the wooden pole.

31 (h) In addition to the increased antenna height allowed in subsection (b) above, an
32 omni-directional antenna may be mounted on the top of an existing wooden pole,
33 provided such antenna is no more than four feet in height and is mounted directly on
34 the top of a pole or attached to a sleeve made to look like the exterior of the pole as
35 close to the top of the pole as technically feasible. All cables shall be concealed within
36 the sleeve between the bottom of the antenna and the mounting bracket.

37 (i) All related equipment including but not limited to ancillary equipment, radios, cables,
38 associated shrouding, microwaves, and conduit which are mounted on wooden poles
39 shall not be mounted more than six inches from the surface of the pole, unless a further
40 distance is technically required, and is confirmed in writing by the pole owner.

1 (j) Equipment for small cell facilities must be attached to the wooden pole, unless
2 otherwise permitted to be ground-mounted pursuant to subsection (1) of this section.
3 The equipment must be placed in the smallest enclosure possible for the intended
4 purpose. The equipment enclosure may not exceed 17 cubic feet. Multiple equipment
5 enclosures may be acceptable if designed to more closely integrate with the pole design
6 and do not cumulatively exceed 17 cubic feet. The applicant is encouraged to place the
7 equipment enclosure behind any banners or road signs that may be on the pole if such
8 banners or road signs are allowed by the pole owner.

9 (k) The visual effect of the small cell facility on all other aspects of the appearance of the
10 wooden pole shall be minimized to the greatest extent reasonably possible.

11 (l) The use of the wooden pole for the siting of a small cell facility shall be considered
12 secondary to the primary function of the pole. If the primary function of a pole serving
13 as the host site for a small cell facility becomes unnecessary, the pole shall not be
14 retained for the sole purpose of accommodating the small cell facility and the small cell
15 facility and all associated equipment shall be removed.

16 (m) All cables and wires shall be routed through conduit along the outside of the pole.
17 The outside conduit shall be colored, powder coated, or other permanent coloration, to
18 match the pole. The number and size of conduits shall be minimized to the number
19 technically necessary to accommodate the small cell.

20 (4) Small Cell Facilities Attached to Existing Buildings. Small cell facilities attached to existing
21 buildings shall conform to the following design criteria:

22 (a) Small cell facilities may be mounted to the sides of a building if the antennas do not
23 interrupt the building's architectural theme.

24 (b) The interruption of architectural lines or horizontal or vertical reveals is discouraged.

25 (c) New architectural features such as columns, pilasters, corbels, or other
26 ornamentation that conceal antennas may be used if they complement the architecture
27 of the existing building.

28 (d) Small cells shall utilize the smallest mounting brackets necessary in order to provide
29 the smallest offset from the building.

30 (e) Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to
31 conceal mounting hardware, create a cleaner appearance, and minimize the visual
32 impact of the antennas. Exposed cabling/wiring is prohibited.

33 (f) Small cell facilities shall be painted and textured to match the adjacent building
34 surfaces.

35 (5) Small cell facilities mounted on cables strung between utility poles shall conform to the
36 following standards:

37 (a) Each strand-mounted facility shall not exceed three cubic feet in volume;

1 (b) Only one strand-mounted facility is permitted per cable between any two existing
2 poles;

3 (c) The strand-mounted devices shall be placed as close as possible to the nearest utility
4 pole, in no event more than six feet from the pole unless a greater distance is technically
5 necessary or required by the pole owner for safety clearance;

6 (d) No strand-mounted device shall be located in or above the portion of the roadway
7 open to vehicular traffic;

8 (e) Ground-mounted equipment to accommodate such strand-mounted facilities is not
9 permitted, except when placed in preexisting equipment cabinets;

10 (f) Pole-mounted equipment for strand-mounted facilities shall meet the requirements
11 for pole-mounted small cells; and

12 (g) Such strand-mounted devices must be installed to cause the least visual impact and
13 with the minimum exterior cabling or wires (other than the original strand) necessary to
14 meet the technological needs of the facility.

15 (6) New Poles in the Rights-of-Way for Small Cell Facilities.

16 (a) New poles within the rights-of-way are only permitted if the applicant can establish
17 that:

18 (i) The proposed small cell facility cannot be located on an existing utility pole or
19 light pole, electrical transmission tower or on a site outside of the public rights-
20 of-way such as a public park, public property, building, transmission tower or in
21 or on a nonresidential use in a Residential Zone whether by roof or panel-mount
22 or separate structure;

23 (ii) The proposed wireless communications facility receives approval for a
24 concealment plan, as described in subsection (7) of this section;

25 (iii) The proposed wireless communications facility also complies with the
26 Shoreline Master Program and SEPA, if applicable; and

27 (iv) No new poles shall be located in a critical area or associated buffer required
28 by the City's critical areas ordinance, except when determined to be exempt
29 pursuant to said ordinance.

30 (7) The concealment plan shall include the design of the screening, fencing or other
31 concealment technology for a pole or equipment structure, and all related transmission
32 equipment or facilities associated with the proposed wireless communications facility, including
33 but not limited to fiber and power connections.

34 (a) The concealment plan shall seek to minimize the visual obtrusiveness of wireless
35 communications facility installations. The proposed pole or structure shall have similar
36 designs to existing neighboring poles in the rights-of-way, including to the extent
37 technically feasible similar height. Other concealment methods include, but are not

1 limited to, integrating the installation with architectural features or building design
2 components, utilization of coverings or concealment devices of similar material, color
3 and texture – or the appearance thereof – as the surface against which the installation
4 will be seen or on which it will be installed, landscape design, or other camouflage
5 strategies appropriate for the type of installation. Applicants are required to utilize
6 designs in which all conduit and wirelines are installed internally in the structure or
7 otherwise integrated into the design of the structure. Use of a unified enclosure equal
8 to or less than four cubic feet in volume may be permitted in meeting these criteria. This
9 requirement shall be applied in a manner which does not dictate the technology
10 employed by the service provider nor unreasonably impair the technological
11 performance of the equipment chosen by the service provider.

12 (b) If the code official has already approved a concealment plan either for the applicant
13 or another wireless communications facility along the same public right-of-way or for
14 the same pole type, then the applicant shall utilize a substantially similar concealment
15 plan, unless it can show that such concealment plan is not physically or technologically
16 feasible, or that such deployment would undermine the generally applicable design
17 standards.

18 (8) These design standards are intended to be used solely for the purpose of concealment and
19 siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a
20 particular technology. When strict application of these requirements would unreasonably impair
21 the function of the technology chosen by the applicant, alternative forms of concealment or
22 deployment may be permitted which provide similar or greater protections from negative visual
23 impacts to the streetscape.

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19.15.030 Land use review types.

There are four categories of land use review that occur under the provisions of the development code.

A. *Type I.* Type I reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.

B. *Type II.* Type II reviews are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues. The difference between Type I and Type II review is that public notification shall be issued for Type II decisions.

C. *Type III.* Type III reviews require the exercise of discretion about nontechnical issues.

D. *Type IV.* Type IV reviews require discretion and may be actions of broad public interest. Decisions on Type IV reviews are only taken after an open record hearing.

E. The types of land use approvals are listed in Table A of this section. The required public process for each type of land use approval are listed in Table B of this section.

...

Table A. Land Use Review Type

Type I	Type II	Type III	Type IV
<ul style="list-style-type: none"> • Home business • Seasonal development limitation waiver • Nonmajor single-family dwelling building permits • Tree removal permit • Right-of-way permit • Special needs group housing safety determination 	<ul style="list-style-type: none"> • Modified wireless communication facilities (6409 per <u>47 CFR 1.40001</u>) • Lot line revision • Setback deviations • Final plat^{2, 3} • Code official design review • Accessory dwelling unit 	<ul style="list-style-type: none"> • New and modified wireless (non-6409) eligible facility • SEPA threshold determination • Critical areas determination (wetland/watercourse buffer averaging/reduction) • Temporary encampment⁴ 	<ul style="list-style-type: none"> • Preliminary long plat approval • Conditional use permit • Variance • Critical areas reasonable use exception • Long plat alteration and vacations • Parking variances (reviewed by design commission)

Type I	Type II	Type III	Type IV
<ul style="list-style-type: none"> • Tenant improvement/change of use • Shoreline exemption¹ • Critical areas determination (steep slope alteration) • Final short plat • Temporary commerce on public property • Site development permits • Transportation concurrency certificate 	<ul style="list-style-type: none"> • Parking variances (reviewed by city engineer) • <u>Small cell deployment</u> 	<ul style="list-style-type: none"> • Short plat alteration and vacations • Preliminary short plat • Development code interpretations • Major single-family dwelling building permit • Shoreline substantial development permit¹ • Shoreline revision (substantial development)¹ 	<ul style="list-style-type: none"> • Variance from short plat acreage limitation • Wireless communication facility height variance • Planned unit development • Design commission design review • Permanent commerce on public property • Shoreline conditional use permit (SCUP)⁵ • Shoreline variance⁵ • Shoreline revision (variance and SCUP)

1

2 ...

1 **19.16.010 Definitions.**

2 Words used in the singular include the plural and the plural the singular.

3 ...

4 Pole Extender: An object affixed between a utility pole and pole top mounted equipment (e.g. a small
5 cell antenna) for the purpose of increasing the height of the pole top mounted equipment above the
6 pole.

7 ...

8 Regulated Improvements: Any development of any property within the city, except:

9 1. Property owned or controlled by the city; or

10 2. Single-family dwellings and the buildings, structures and uses accessory thereto; or

11 3. Wireless communications structures, including associated support structures and equipment
12 cabinets; or

13 4. Small cell facilities or small cell networks.

14 ...

15 Small cell deployment: The construction and installation of either small cell facilities, small cell networks,
16 or both small cell facilities and small cell networks, together with the installation of the fiber network
17 supporting the small cell facility and small cell network.

18 ...

19 "Small cell facility" and "small cell network" are defined in accordance with RCW 80.36.375.

20 ...

21 "Small cell" shall mean "small cell facility".

22 ...

23 Undergrounded Utility Areas: A geographic area where utilities that are commonly located aboveground
24 (e.g. electrical power, cable and telephone lines, etc.) have been placed entirely underground, and
25 associated support structures (e.g. wooden utility poles or guy poles) have been removed.

26 ...

1 Utilities: Facilities providing infrastructure services by a public utility or private utility regulated by the
2 state through fixed wires, pipes, or lines. Such facilities may include water, sewer, storm water facilities
3 (lines, ditches, swales and outfalls) and private utilities such as natural gas lines, telecommunication
4 lines, cable communication lines, electrical lines and other appurtenances associated with these utilities.
5 "Utilities" does not include wireless communication facilities, but do include small cell facilities.

6 ...

7 **Wireless Communications:**

- 8 1. Attached Wireless Communications Facility (Attached WCF): An antenna array that is attached
9 to an existing building or structure, including utility poles, with any accompanying attachment
10 structure, transmission cables, and an equipment cabinet which may be located either inside or
11 outside of the attachment building or structure.
- 12 2. Wireless Communications Antenna Array (Antenna Array): One or more rods, panels, discs or
13 similar devices used for the transmission or reception of radio frequency signals, which may include
14 omni-directional antenna (whip), directional antenna (panel), and parabolic antenna (dish).
- 15 3. Wireless Communications Facility (WCF): Any unstaffed facility for the transmission and/or
16 reception of radio frequency signals usually consisting of antennas, an equipment cabinet,
17 transmission cables, and a support structure to achieve the necessary elevation.
- 18 4. Wireless Communications Support Structure (Support Structure): A structure designed and
19 constructed specifically to support an antenna array, and may include a monopole tower, lattice
20 tower, guy-wire support tower or other similar structures. Any structure which is used to attach an
21 attached WCF to an existing building or structure (hereinafter "attachment structure") shall be
22 excluded from the definition of and regulations applicable to support structures.
- 23 5. Wireless Communications do not include small cells for the purposes of Title 19 MICC.

**CITY OF MERCER ISLAND
ORDINANCE NO. 19-10**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
RENEWING FOR SIX MONTHS INTERIM DESIGN AND CONCEALMENT
STANDARDS FOR DEPLOYMENT OF SMALL CELL FACILITIES ADOPTED IN
ORDINANCE 19C-02; PROVIDING FOR SEVERABILITY AND ESTABLISHING
AN EFFECTIVE DATE.**

WHEREAS, the City Council unanimously passed Emergency Ordinance 19C-02 (“Ord. 19C-02”) on January 15, 2019, and held a public hearing on March 5, 2019, in response to the Federal Communications Commission’s Declaratory Ruling and Third Report and Order (“New Rules”) relating to small cell facilities, which became effective January 14, 2019; and

WHEREAS, the New Rules significantly preempt the City’s ability to regulate the installation of small cell facilities on City-owned public rights-of-way; and

WHEREAS, aesthetic requirements imposed by the City under the New Rules on installation of small cell facilities must be published in advance and must also be reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective; and

WHEREAS, Ord. 19C-02 adopted interim design and concealment standards for deployment of small cell facilities; and

WHEREAS, the design and concealment standards for small cell facilities in Ord. 19C-02 are effective for an initial period of six months, unless repealed, extended or modified by the City Council after subsequent public hearing(s) and entry of appropriate findings of fact; and

WHEREAS, the City has not yet adopted permanent design and concealment standards for deployment of small cell facilities; and

WHEREAS, the interim design and concealment standards adopted under Ord. 19C-02 will expire on or about July 15, 2019; and

WHEREAS, the conditions that existed when Ord. 19C-02 was adopted requiring the need for the City to have interim design and concealment standards for deployment of small cell facilities continue to exist today; and

WHEREAS, the City Council finds that deployment of small cell facilities with unregulated design and concealment standards may result in uncoordinated installations, visual blight, interference with public facilities and equipment, and traffic dangers that pose harm to public health, safety, property, and welfare; and

WHEREAS, to prevent the potential harm to public health, safety, property, and welfare, the City Council concludes that the City needs to extend the interim design and concealment standards for deployment of small cell facilities until permanent standards can be adopted following the process and procedures for adopting development regulations; and

WHEREAS, the City is authorized under RCW 35A.63.220, 36.70A.390 to renew an interim zoning and official control ordinance for one or more six-month periods, provided it holds a public hearing on the same prior to each renewal; and

WHEREAS, consistent with the provisions of RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing prior to passing this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Whereas Clauses Adopted. The “Whereas Clauses” set forth in the recital of this Ordinance are hereby adopted as the findings and conclusions of the City Council for passing this Ordinance. Furthermore, the “Whereas Clauses” set forth in the recital of Ord. 19C-02 are hereby adopted by reference as additional findings and conclusions of the City Council for passing this Ordinance.

Section 2. Interim Standards Renewed. On July 14, 2019 prior to the expiration of its initial six-month effective period, the effective period of Ord. 19C-02 and the Interim Design and Concealment Standards for Deployment of Small Cell Facilities, as set forth in Exhibit A of Ord. 19C-02 and adopted thereunder, shall be renewed under RCW 35A.63.220 and RCW 36.70A.390 for another six-month until January 14, 2020, unless repealed, extended or modified by the City Council.

Section 3. Severability. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this Ordinance or its application to any other person, property or circumstance.

Section 4. Publication and Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This Ordinance shall take effect and be in full force five days after the date of publication.

Passed by the City Council of the City of Mercer Island, Washington, at its regular meeting on the 18th day of June 2019 and signed in authentication of its passage.

CITY OF MERCER ISLAND

Debbie Bertlin, Mayor

Approved as to Form:

ATTEST:

Bio F. Park, Interim City Attorney

Deborah A. Estrada, City Clerk

Date of Publication: _____



REVISED
BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND, WA

AB 5578
June 18, 2019
Regular Business

MEMORANDUM OF UNDERSTANDING ("MOU") WITH MAINSTREET PROPERTY GROUP FOR THE PROPOSED COMMUTER PARKING AND MIXED-USE PROJECT	Action: Approve MOU for the Proposed Commuter Parking and Mixed-Use Project.	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
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DEPARTMENT OF	City Manager (Jessi Bon)
COUNCIL LIAISON	n/a
EXHIBITS	<ol style="list-style-type: none"> 1. REVISED Memorandum of Understanding ("MOU") with MainStreet Property Group and attached exhibit (6/18/19) 2. Critical Path Diagram
2018-2019 CITY COUNCIL GOAL	1. Prepare for Light Rail and Improve Mobility
APPROVED BY CITY MANAGER	

AMOUNT OF EXPENDITURE	\$	n/a
AMOUNT BUDGETED	\$	n/a
APPROPRIATION REQUIRED	\$	n/a

SUMMARY

The purpose of this agenda bill is to approve a Memorandum of Understanding ("MOU") with MainStreet Property Group LLC for the Proposed Commuter Parking and Mixed-Use Project (the "Project") located at 7810 SE 27th Street, also known as the BP/ARCO (f/k/a Tully's) property (see Exhibit 1).

BACKGROUND

In anticipation of the impacts of the closure of the I-90 reversible center roadway, the City reached a Settlement Agreement with Sound Transit (see [AB 5346](#)), which provides \$10.05 million toward projects to offset the impacts of the East Link light rail project. In response to the community's call for more commuter parking, the City Council negotiated funds that would be used (\$4.41 million) for transit commuter parking stalls, to be constructed no later than December 31, 2025. The April 2018 Community Survey (see [AB 5440](#)), which confirms the community's desire for more commuter parking, showed that 59% of respondents were unsatisfied with the availability of commuter parking, and the majority of respondents selected commuter parking as their top transportation priority.

At its meeting on June 5, 2018, the City Council authorized the City Manager to execute a Purchase and Sale Agreement with the Parkway Management Group, et al., to acquire the former BP/ARCO property, located at 7810 SE 27th Street (see [AB 5434](#)). This property will be combined with a small portion of adjacent land the City already owns at Sunset Highway, known as Parcel 12, with the intent to develop the properties through a public-private partnership to build an underground, transit commuter parking facility

and potential mixed-use Town Center development (see [AB 5418](#)). The City is currently in the due diligence process and closing is expected in 2019.

The Sound Transit Settlement Agreement limits Sound Transit's contribution to a minority share (49 percent) of the overall development costs, which means the City is responsible for the remaining, majority share (51 percent) of the parking facility costs. The City intends to use the value of Parcel 12 at Sunset Highway as its match against the Sound Transit funds. In addition, the City would like to leverage its current land on Sunset Highway, future acquisition of the BP/ARCO property, and the development rights on these combined parcels to a developer in an effort to reduce the taxpayers' contribution that would otherwise be required to support transit commuter parking construction costs in excess of the City's land contribution and Sound Transit's funding contribution.

This public-private partnership presents an opportunity to significantly reduce a City contribution of funds (other than the Sound Transit contribution) by utilizing City-owned land in a key geographic location that supports long-term, transit commuter parking for Mercer Island.

Additionally, this proposed Project could provide the Mercer Island Center for the Arts (MICA) an alternate location for its future home. In 2018, MICA conducted a robust visioning process to gauge whether Islanders valued the arts and supported a theatre and performance arts space (see [MICA's Community Visioning Report](#)). This Project provides a unique opportunity to realize several community benefits in the Town Center.

PROJECT PARTNER SELECTED: MAINSTREET PROPERTY GROUP LLC

While the City has yet to close on the BP/ARCO property, it was determined that early involvement, through a Request for Qualifications (RFQ) process, with a reputable developer to design and construct a commuter parking and mixed-use project would increase the likelihood the Project will be on-time and on-budget.

Council reviewed draft RFQ criteria and the selection process at its July 17, 2018 meeting (see [AB 5444](#)), and subsequently approved the RFQ at its August 28, 2018 meeting (see [AB 5459](#)). Staff issued the [RFQ](#) on August 30, 2018. The RFQ attracted the interest of nine qualified development teams.

Following a thorough evaluation, interview, reference checking process, and community open house, the City narrowed the field of potential commuter parking and mixed-use development partners to two finalists: MainStreet Property Group LLC and Shelter Holdings / Weinstein A+U. On November 26, 2018, both teams made presentations and received questions from the City Council (see [AB 5499](#)).

In early December, MainStreet Property Group LLC and Shelter Holdings / Weinstein A+U presented a joint proposal to merge both organization's proposals. As a result of these discussions, MainStreet Property Group LLC ("MainStreet") is the developer of the Project, and Weinstein A+U is the lead architect and planner. GGLO Design remains on the MainStreet team as the interior designer for the Project.

OVERVIEW OF MOU

After receiving direction from the City Council on January 15, 2019 to move forward with negotiating an MOU between the City and MainStreet (see [AB 5527](#)), City staff, consultants from Heartland and representatives from MainStreet conducted extensive negotiations and analysis to arrive at the MOU presented to the Council this evening.

The intent of the MOU is to establish a conceptual, non-binding deal structure that will form the basis for a future Purchase and Sale Agreement ("PSA"), Development Agreement ("DA"), and other related agreements. The MOU is a non-binding document, other than a single provision that commits the City to negotiating exclusively with MainStreet for a two-year period while the future DA, PSA, and other related agreements are developed for consideration by the City Council.

Section-by-Section MOU Highlights (AB pages are listed)

Recitals (Pages 6-7):

This section of the MOU, in very general terms, describes the history and the general scope of the Project. More importantly, this section identifies the goals that were set by the City Council, either as Comprehensive Plan Land Use Goals or goals specific to the redevelopment of this property, all of which the proposed Project and MOU strive to achieve.

Section 2 – Project Components (Pages 8-9):

This section begins to more specifically define the Project components including provisions for commuter parking, the number of residential units, anticipated commercial space, and the inclusion of a space for MICA. Those components include:

- The provision of 100 stalls for commuter parking during commuter parking hours. (Note: commuter parking hours are yet to be defined.)
- The commuter parking stalls will be subject to a recorded perpetual parking easement that will run with the land. The parking easement will address future operating issues such as maintenance, operating hours, capital repairs, signage, etc.
- The provision of not less than 120 multifamily units.
- The provision of additional commuter stalls by shared residential parking, allowing for up to 25% of the residential stalls to be used for commuter parking during defined commuter parking hours.
- Likewise, the commuter parking stalls may also be used for other purposes outside of commuter parking hours.
- Not less than 3,000 square feet of ground floor commercial retail and/or office space.
- A provision for MICA performance and administrative space, provided MICA meets fundraising goals and other Project-related requirements.

Section 3 – Project Goals and Values (Pages 9-10):

This section provides an overview of the Project goals including the provision of commuter parking, development of a vibrant gateway to the Mercer Island Town Center, a new home for MICA, additional multi-family housing, which includes an affordable housing component, cultural arts components and more.

Section 4 – Community Outreach (Page 10):

This section outlines the commitments to engage the community in Project design discussions including two open house meetings in the early design phase. MainStreet will also host a Project webpage, and the City will continue to update the “Let’s Talk” page. Project briefings to the City Council will be ongoing.

Section 5 – City Project Obligations (Pages 10-11):

This section generally describes the City’s commitments to the Project including the following:

- Resolution of the hazardous waste clean-up claim against BP/ARCO and completion of the clean-up operations consistent with Department of Ecology (“DOE”) requirements.
- Obtaining approval from WSDOT to transfer Parcel A-1 (also known as Parcel 12) to MainStreet for Project construction.
- Resolution of appeals of Comprehensive Plan amendments.
- Conveyance of the BP/ARCO property to MainStreet, subject to a perpetual commuter parking easement.
- Indemnification provisions related to future contamination issues, if any.
- Section 5.2 specifically acknowledges that the Project timeline/schedule is contingent on the City fulfilling its obligations in a timely manner.

Section 6 – MainStreet Obligations (Pages 11-12):

This section describes the various components of the Project relative to MainStreet's design and construction obligations:

- Provision of 100-commuter parking stalls.
- Calls for the development of two Project design proposals, one to include MICA and one to include a different mix of residential, retail, civic, or commercial spaces.
- Completion of the Project by 2023, subject to the City fulfilling its obligations.
- Specific performance obligations by MainStreet at the various phases of the Project.
- Agreement to perform the requirements of the DOE-approved remediation as part of the overall construction project.
- Satisfy MICA-related obligations as described throughout the MOU.

Section 7 – MainStreet Expectations Regarding MICA Obligations (Pages 12-13):

Although the City of Mercer Island is not a direct party to the future potential agreement between MICA and MainStreet, a section was included in the MOU to outline the general expectations of both parties (MICA and MainStreet). The commitments are summarized as follows:

- MainStreet will prepare an MOU with MICA once the City has satisfied a number of conditions which generally include settlement with BP/ARCO, securing site control, and completing the rezone of Parcel 12, plus MICA meeting its performance milestones.
- The remaining sections outline MICA obligations to participate in the Project.

Section 8 – City and MainStreet Mutual Obligations (Pages 13-14):

This section generally describes the obligations of both parties for the Project to proceed, which includes execution of a PSA and a DA. The City also commits to timely review and processing of permits, inclusive of issuing a SEPA threshold determination.

Section 9 – Real Property/Purchase and Sale Agreement (Page 14):

The terms of the MOU call for the conveyance of the properties (the BP/ARCO site and Parcel 12) at no cost to MainStreet in consideration of constructing the Project and providing commuter parking in perpetuity. This section also outlines the provisions for closing on the PSA.

Section 10 – Development Agreement (Pages 14-15):

This section describes the components of the future DA and further describes vesting terms and other permit approvals. The Project will proceed as a Type IV land use review. Section 10.4 calls for a timely review by the Design Commission.

Section 11 – Schedule and Process (Page 15); see a/so Exhibit C to the MOU:

The exact Project schedule cannot be determined at this time due to factors outside of the City's and MainStreet's control, most notably the environmental site clean-up. A schedule was developed (see Exhibit C to the MOU) that outlines the Entitlement Process and anticipated milestones once the City's obligations are met.

Section 12 – Required MainStreet Responsibilities and Investments (Page 15):

This section identifies MainStreet's responsibilities to pursue entitlements and construction and to record a perpetual easement against the property for the commuter parking stalls.

Section 13 – No Land Speculation (Page 15):

Allows the City to repurchase the property according to the terms established in the PSA if MainStreet fails to timely construct the Project.

Section 14 – Required City Responsibilities and Investments (Pages 15-16):

This section calls for the timely conveyance of the properties to MainStreet, the timely processing of permits, and the joint defense of any project appeals.

Sections 15-22 – MOU Understanding, Exclusive Negotiations, Nonbinding Provisions and Other (Page 16):

These sections speak to the non-binding nature of this MOU and reiterate that the MOU is intended to set out the general deal points under which both parties anticipate the project proceeding.

As noted, Section 16 contains the only binding provision of the entire MOU. In that section, the City will be bound to negotiate exclusively with MainStreet for a period of two years following execution of the MOU. The extended exclusive negotiation period was included in this MOU due to the timeline uncertainty related to the environmental site clean-up.

NEXT STEPS

Timing is of the essence in approving this MOU to ensure the new commuter parking facility opens concurrently with the opening of the Sound Transit Mercer Island Station. Looking ahead, the primary critical path item (see Exhibit 2) is reaching settlement with BP/ARCO to fund the site clean-up. This will continue to be a top priority for staff.

The City and MainStreet will also begin working on the PSA, the DA, and other related agreements for future City Council consideration. The timeline to complete these draft agreements is subject to completion of the BP/ARCO settlement agreement and resolution of outstanding property matters (WSDOT property transfer, re-zone, street vacation for Sunset Highway, etc.). City Council review of these documents (PSA and DA) is anticipated at the end of 2019, or early 2020. The City Council will continue to be briefed on project progress.

RECOMMENDATION

City Manager

MOVE TO: Approve the Memorandum of Understanding with MainStreet Property Group LLC, in substantially the form attached as Exhibit 1, for the proposed commuter parking and mixed-use project, and direct the Interim City Manager to prepare a Purchase and Sale Agreement, Development Agreement and related agreements for City Council consideration as soon as may be practical.

**MEMORANDUM OF UNDERSTANDING
MERCER ISLAND COMMUTER PARKING MIXED USE PROJECT
(Non-binding except Section 16 (re: exclusive negotiations))**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), dated this __ day of __, 2019 (Effective Date) is entered into between the City of Mercer Island, a Washington municipal corporation (City) and MainStreet Property Group, LLC, or a controlled subsidiary thereof (MainStreet). The City and MainStreet are referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

A. In 2008, voters approved a mass transit expansion proposal, Sound Transit 2 that will add 36 miles of light rail to the Sound Transit system. Mercer Island will be served by the East Link extension. Sound Transit’s East Link includes 10 stations from Seattle's International District to Mercer Island, through downtown Bellevue, terminating at the Redmond Technology Station. When East Link opens in 2023, passengers will be able to ride almost 40 miles of light rail, from the Eastside to downtown Seattle and from there to Northgate or to Sea-Tac Airport and Angle Lake.

B. Of the 39 cities in King County, the City of Mercer Island is among the few jurisdictions that will be directly served by having a new light rail station in 2023.

C. As part of the existing mass transit system and high occupancy vehicle (HOV) network, the Washington State Department of Transportation (WSDOT), Sound Transit, and King County Metro have created Park and Ride lots for commuter parking near access points, including a Sound Transit commuter parking area on North Mercer Way that will also serve Sound Transit’s light rail system.

D. Currently the Park and Ride lot provides 447 spaces and is at capacity. Typically, the lot fills up before 7am on weekdays. Demand will only continue to increase in 2023, when the new light rail station is slated to open.

E. Sound Transit monitors parking use at the Mercer Island Park and Ride lot. On average, approximately half the commuter vehicles that use this lot are vehicles registered outside City limits. These vehicles drive from other jurisdictions to the Mercer Island Park and Ride lot, then commute by bus to Seattle and eastside locations from that lot. Because Sound Transit is a regional agency, it cannot limit use by non-Mercer Island residents. The City expects that parking demand for this lot will increase when Sound Transit’s Mercer Island light rail station opens in 2023.

F. City residents do not have sufficient commuter parking available for their use. The City has a vital need for additional commuter parking. In order to better serve Mercer Island residents, the City sought to construct a separate parking structure that will serve the commuter needs of City residents.

G. The City desires to support the Town Center vision described in the Comprehensive Plan by supporting the provision of commuter parking near transit and Town Center and supporting the creation of well-designed development in the Town Center. The Mercer Island Comprehensive Plan (Land Use Element Goals 1, 6, 7, 9, 10, 11, and 14) directs the City to integrate the design of regional transit into the Town Center to ensure sufficient parking, support multi-modal access to regional transit, and create a walkable pedestrian environment from transit to Town Center.

H. During development of the Project concept and Request for Qualification (RFQ) process, the City used a commuter parking construction cost estimate of \$85,000 per stall. Since selecting MainStreet as the City's Project partner, the City has obtained Sound Transit's actual all-in cost (excluding land) to entitle, design, engineer and construct structured parking in other cities, including Kent, Auburn, and Sumner. Sound Transit's construction cost now exceeds \$100,000 per stall. Using Sound Transit's actual costs~~that estimate~~, the cost to construct a stand-alone commuter structured parking garage of 100 stalls would equal approximately \$10 million. Considering the City's other budget priorities, the City does not have sufficient funds to construct a stand-alone commuter parking facility.

I. The City has commenced extensive negotiations with a private property owner and the Washington State Department of Transportation with the intent to assemble property and property rights near both the Mercer Island Light Rail Station that the City believes is suitable for commuter parking.

J. The City has determined that the estimated cost to construct structured parking on this site exceeds available City funds, given the City's other budget priorities. In order to address the residents' critical need for additional commuter parking, the City Council developed a vision to enter into a public-private partnership where it could leverage its limited funds available for construction of commuter parking. The city sought to partner with a private developer that would construct at least 100 commuter parking stalls in exchange for property rights to construct an urban, mixed-use development that would act as an inviting gateway between the new light rail station and the Town Center. The City desires to obtain the commuter parking its residents need, plus add housing opportunities in the City's Town Center, provide new retail opportunities, add affordable housing units, and potentially provide a new performance center, studio, and administrative space for the Mercer Island Center for the Arts (MICA) (collectively, the Project), provided MICA meets its funding milestones, creates an appropriate fundraising strategy and schedule, provides a design schedule, completes a project design, and defines programmatic elements, and ~~procurement~~ procures adequate funding to construct, operate, and maintain its portion of the project as determined by MainStreet.

K. With this vision in mind, the City entered into an agreement on June 7, 2018, to purchase downtown property commonly referred to as the "Tully's BP/ARCO pProperty," (formerly known as the "Tully's Property") with Parkway Management Group. By assembling the Tully's BP/ARCO pProperty with an adjacent property owned by the city, including a portion of Sunset Highway, known as Parcel 12 (also described as Parcel A-1), and, if needed, the City's potential purchase of a small portion of Aubrey Davis Park Parcel A-2 (approximately 5000 square feet) (all collectively, the "Property"), the City developed a combined Project site. The City then issued a Request for Qualifications (RFQ), seeking developers to partner with the City to construct commuter parking as part of a mixed-use development.

L. The City completed an open, competitive RFQ process seeking innovative and capable property developers to design and build the Project. The City Council reviewed the draft RFQ criteria and selection process at its July 17, 2018, meeting and approved the RFQ process at its August 28, 2018, meeting (AB 5459). The Council then selected and interviewed two top finalists at its November 26, 2018 meeting (AB 5499), MainStreet Property Group, LLC and Shelter Holdings.

M. The top two finalists elected to merge the proposals, resulting in the City Council's selection of MainStreet Property Group, LLC, ("MainStreet") as its preferred partnership developer, based on MainStreet's proposal and experience in public-private partnerships and on the presentation materials. MainStreet expects to generally utilize the design team of Weinstein A+U as the lead architect and GGLO as the interior designer for the Project.

N. An integral part of one of MainStreet's proposals includes a permanent theater and administrative home for MICA in the City's Town Center. MICA's potential participation and inclusion in the Project is

subject to MICA and Mainstreet’s good faith negotiation of a separate agreement to develop a theatre, performance, studio and administrative space, and is specifically conditioned on MICA obtaining sufficient capital funding for design, development, construction, operation and maintenance in a timely manner under mutually agreeable terms between MICA and MainStreet. Alternatively, in the event that MICA is not able to obtain sufficient capital funding or is unable for other reasons to participate in the Project, MainStreet will also submit a plan design that does not include MICA in the Project that may include additional residential, retail, civic, and/or other commercial components, and the City will review both alternatives concurrently.

O. By its Resolution No. 1558, the Council directed the City Manager to enter into direct negotiations with Mainstreet to negotiate this non-binding Memorandum of Understanding exclusively with MainStreet as its preferred development partner.

UNDERSTANDINGS

Therefore, the Parties state their understanding of the current situation as follows:

1. **The Project.** MainStreet will pursue the development of the Project pursuant to the City’s general Project vision described in its RFQ, the scope described in this MOU, and related Development Agreement (DA), Purchase and Sale Agreement (PSA) and other related agreements, all generally consistent in intent with the combined November 26, 2018, proposal submitted to, and selected by, Council.

2. **Project Components.** The Parties currently anticipate the Project will be comprised of the following components:

2.1 The provision of commuter parking spaces, subject to shared-parking during non-peak commuter parking demand, through a recorded perpetual parking stall easement or other mutually acceptable agreement that permanently provides for commuter parking, together with a related “Commuter Parking Easement with Joint Use and Maintenance Provisions” (“Commuter Parking Easement” or “CPE”) that runs with the land and defines the Parties’ ongoing joint use, maintenance responsibilities, signage requirements, capital ~~or~~ and operating costs, operating hours, access/restrictions, rates, and enforcement related to commuter parking.¹ The City will be responsible for its share of all post-construction operational and maintenance cost associated with commuter parking. The Commuter Parking Easement will further describe the rights and obligations of the Parties.

2.2 The City and MainStreet will identify the total number of Project parking stalls after completion of a detailed Project parking analysis and after the Mercer Island Design Commission reviews and ultimately approves the Project proposal (the “Approved Stalls”). Of the Approved Stalls, ~~100~~ at least 100 stalls will be allocated to commuter parking during dedicated commuter parking hours and a specified number of stalls will be allocated for the code-required residential parking for not less than 120 multifamily units. Twenty-five percent of the residential stalls will be shared with commuters and increase the 100 commuter parking stalls. The 100 stalls of commuter parking may be shared with other building uses outside the hours of commuter parking. Retail parking requirements will be the greater of the code or four stalls per 1,000 SF with not less than 3,000 SF of retail. Hours of commuter parking will be determined in the DA or the Joint Use and Maintenance Agreement, subject to the data provided in the detailed Project parking analysis. The commuter parking will be shared with any MICA use. Employees of MICA will be required

¹ Because each stall will be subject to use, at various times, by all Project tenants, (unlike a commercial parking lot, which has dedicated, full-time, off-site parking) All-all parking identified in this MOU is associated with an on-site use. Following the City Council’s approval of this MOU, the Development Services Group will issue a formal code interpretation determining this issue.

to park off-site unless otherwise agreed, and adequate proof of sufficient off-site parking availability, by way of a shared parking agreement or other agreement satisfactory to the City, must be provided to demonstrate off-site parking availability.

2.3 Not less than 120 multifamily residential units with seventy-five percent of the designated residential parking spaces exclusively for resident use.

2.4 Not less than 3,000 square feet of ground floor commercial retail and/or office space with a minimum number of commercial, retail, and/or office parking space (increased proportionately with increases in retail/office spaces).

2.5 The provision of a MICA performance and administrative space; ~~provided is contingent on~~ MainStreet and MICA reaching an agreement for that space within the Project. In order to finalize this agreement, and MICA will be required to timely prepares a design that successfully integrates with the overall Project, to provide a day-to-day operations plan, ~~and to provide a fundraising~~ schedule, and to achieves ~~its all~~ funding milestones needed to develop, design, construct, operate, and maintain its portion of the Project as determined by Mainstreet; ~~and provided further, that~~ In turn, MainStreet will negotiates regularly; and in good faith to include MICA's performance and administrative space and related facilities ~~in the Project~~. Section 7 further explains MICA coordination. If MICA does not achieve its obligations set forth in Section 7, MainStreet will still provide the commuter parking while adding additional residential, retail, civic, and/or commercial space to the Project. The DA will provide greater specificity on this item.

2.6 Because land use and building codes, as well as project financing and MICA's participation, have yet to be finally concluded, these anticipated components are subject to revision.

3. Project Goals and Values. MainStreet and the City intend to develop an outstanding example of a successful public-private partnership. The Project will seek to achieve a design that supports and integrates with the new Sound Transit station, adjoining park facilities, and with pedestrian, and other existing urban elements, subject to Section 5.1.14. This new urban gateway will create a dynamic, vibrant addition to Mercer Island's Town Center that will enliven and activate the Island's downtown core by creating an enduring, mixed-use community that will be built to last. Our vision and goals include:

3.1 First and foremost, providing Island residents more commuter parking;

3.2 Capturing the values expressed in the City's Town Center code and meeting or exceeding Town Center standards;

3.3 If MICA is able to join as a Project partner, creating a new home for MICA, including a permanent and functional theater and administrative space;

3.4 Constructing at least 120 additional mixed income apartment residences in the City's Town Center;

3.5 Adding affordable housing units to the City's Town Center;

3.6 Enhancing the pedestrian walking experience in the City's Town Center, including landscaping, lighting, articulated building frontage, and thoughtful interaction between public space and private theatre, retail, and residential spaces on the Property;

3.7 Honoring existing public art as well as adding, if possible, new art to adjoining or nearby trails and pathways on the Property, including mitigating the portion of Aubrey Davis Park (Parcel A-2, Exhibit C) needed for development through on-Property public art;

3.8 Completing development and opening all facilities concurrently with the completion of Mercer Island's new light rail station, subject to the City's timely completion of its Project obligations and unavoidable ("force majeure") events beyond the control of the Parties;

3.9 Controlling project costs by working together to maintain financial feasibility;

3.10 Designing and constructing an environmentally sustainable development, with a goal to obtain at least a LEED Gold rating. LEED Platinum will be reasonably considered and pursued if economically viable;

3.11 Designing and developing the Project, to the extent feasible and practical, so as to be sensitive to the concerns of neighboring properties; and

3.12 Enhancing the social, cultural, environmental, and economic health of Mercer Island.

3.13 A fundamental concept of the Project is balancing public and private benefit.

4. **Community Outreach.** MainStreet will be responsible for the following community outreach:

4.1 Two community engagement town hall open house meetings early in the design process to solicit and incorporate public feedback on the proposed design.

4.2 Preparation of a MainStreet sponsored website that includes continuously updated frequent updates to Project-related ~~and contact~~ information and Project contacts. ~~Such This~~ website shall be marketed to the community as available for review on demand, and will allow the community to submit comments and feedback on the Project.

4.3 Project briefings before the City Council at key milestones.

5. **City Project Obligations.**

5.1 The Project requires the City accomplish the following, subject to amendment in the DA by mutual agreement:

5.1.1 BP/ARCO Hazardous Waste Remediation. Resolve hazardous waste contamination claim against BP/ARCO and complete cleanup operations consistent with Department of Ecology (DOE) requirements. The Parties expect that remediation will largely consist of complete site characterization, removal of contaminated soils, disposal of those soils at an approved offsite location, and subsequent extraction and/or monitoring activities. Remediation generally will occur concurrently with Project development.

5.1.2 Hazardous Waste Remediation Cost Allocation. Provide payment, through BP/ARCO or other sources, for all incremental costs incurred to remediate and monitor the Property. Contamination.

5.1.3 DOE Approval. The City will obtain the Department of Ecology's approval of a hazardous waste cleanup plan and provide MainStreet with protection from all third-party claims or

regulatory enforcement related to hazardous waste cleanup in a form that is acceptable to MainStreet and the City.

5.1.4 WSDOT Transfer Approval; Parcel A-1. Obtain WSDOT approval to transfer the property identified as Parcel A-1 (also known as Parcel 12) as identified on the Terrane survey dated 11/2/18 (attached as Exhibit A and as shown on the survey attached as Exhibit D) to MainStreet for Project construction, subject to appropriate preservation of commuter parking restrictions.

5.1.5 Land Use Appeals. Resolve comprehensive plan appeals to allow development consistent with the current Project proposal.

5.1.6 Tully'sBP/ARCO Site Conveyance. The fee simple conveyance from the City to MainStreet of the property identified as the Tully'sBP/ARCO Site-Property (attached as Exhibit B and as shown on the Exhibit D survey) with appropriate zoning in place after completion of all appeals, if any.

5.1.7 Potential Parcel A-2 Property Purchase. If needed to incorporate MICA's Project requirements or to address total Project parking demand as determined by MainStreet, Parcel A-2 (attached as Exhibit C and as shown on the Exhibit D survey) may be purchased by the City. WSDOT currently owns Parcel A-2.

5.1.8 Parcel A-1/Parcel 12/Parcel A-2 Property Transfer. Concurrent with the Tully'sBP/ARCO site-Property conveyance, the fee simple conveyance or transfer, with mutually agreed and recorded commuter parking use restrictions, of Parcel A-1 and Parcel A-2 (if applicable) with appropriate zoning in place after completion of all appeals, if any. The Parcel A-1 deed also has a provision regarding the "revenues resulting from any vacation, sale, or rental of this property." The City must remove this restriction from the deed prior to conveyance to MainStreet.

5.1.9 Indemnification. Indemnification from the City to MainStreet regarding remaining potential liability, if any, for existing contamination after property transfer.

5.1.10 Easements, Covenants, Licenses. City issuance of all necessary easements, covenants, or licenses for the Project at no cost to MainStreet.

5.1.11 Mitigation. At this time, the parties anticipate no off-Property mitigation or improvements are required for the Project. This item must be supported by necessary studies during the SEPA review for the DA.

5.1.12 Permit Processing. Timely processing of permits and administrative appeals.

5.1.13 Multifamily Tax Exemption (MFTE). If the development meets all existing affordable housing requirements, meets MFTE eligibility criteria under the Mercer Island City Code (MICC), and completes an application as defined in the MICC, the City will approve a 12-year MFTE for the Project.

5.1.14 Off-Property Improvements. Except for off-Property improvements MainStreet may be required to design or construct as a condition of a SEPA determination or Mercer Island City Code regulations, the City will be responsible for the design and completion of all off-Property improvements.

Several items listed above are addressed in greater detail below. Section 11 and its referenced Exhibit E provide a timeline of the City's obligations.

5.2 City Project Obligations and the Project Schedule.

5.2.1 The Parties acknowledge that the Project is contingent upon the City completing each of the items listed in Section 5.1, above. The failure of the City to successfully and timely achieve these items pursuant to the entitlement schedule in Section 11 and its referenced Exhibit E will result in MainStreet not being able to deliver commuter parking before the opening of the Sound Transit light rail stations on Mercer Island. If the City is not successful in completing these items, the Project may become infeasible to complete before or after the opening of the Mercer Island light rail stations.

5.2.2 The Parties further acknowledge that MICA ~~likely~~ may not be a component of the Project if the City is unsuccessful in the Comprehensive Plan appeal pending before the Growth Board (Section 5.1.5), to the extent the appeal affects the Project site.

6. MainStreet Project Obligations. The Project requires MainStreet accomplish the following, subject to amendment in the DA by mutual agreement:

6.1 Provide at least 100 dedicated commuter parking stalls which will be made available at mutually agreed times for Mercer Island commuters, and ~~twenty-five percent of all residential stalls employ its best efforts to provide additional shared parking for~~ preferential Island commuter use. These spaces may be shared by MICA or other users during non-commuter hours.

6.2 Provide the City with non-exclusive easement rights to the commuter parking spaces. The Parties currently anticipate that this easement would be included in the Commuter Parking Easement, which specifies other rights and obligations associated with the commuter parking. ~~In order to guarantee perpetual commuter parking rights in favor of the City, The the~~ Commuter Parking Easement will require the remedy of specific performance ~~of the City's easement rights in the event any Project owner attempts to diminish or eliminate the City's easement rights are diminished or eliminated. With specific performance, the City can demand—and a court must direct—that the Project owner provide the parking, rather than try to substitute a monetary payment to compensate the City for lost or diminished commuter parking.~~

6.3 Submit two Project design proposals. The first proposal will be generally consistent with MainStreet's proposal, using the combined MainStreet/Shelter/Weinstein A+U development proposal and include space for MICA on the ground floor. The second proposal will include a different use with a mix of residential, retail, civic ~~and/or~~ commercial spaces in the event that MICA withdraws or does not satisfy its obligations under the MICA-MainStreet MOU. Section 7 provides additional details regarding MICA.

6.4 Complete Project construction before opening of the Sound Transit Light Rail station, which is slated to occur in 2023, subject to the City's timely completion of its Project obligations and unavoidable ("force majeure") events beyond the control of the Parties.

6.4.1 Pre-Construction. If, before MainStreet purchases the Property, MainStreet fails to commence construction on the Project within agreed timelines, subject to the City's timely completion of its Project obligations and force majeure events, MainStreet will provide the City all development plans, due diligence materials, third-party studies, and any other intellectual property developed or used to prepare the Project for construction.

6.4.2 Pre-Construction/Post-Sale. If, after MainStreet purchases the Property but before Project construction begins, MainStreet fails to commence construction on the Project within agreed timelines, subject to the City's timely completion of its Project obligations and force majeure events, fee title to the Property will revert to the City, and MainStreet will provide the City all development plans, due

diligence materials, third-party studies, and any other intellectual property developed or used to prepare the Project for construction.

6.4.3 During Construction. In order to begin Project construction, MainStreet will provide the City security, such as a Completion Guaranty or bond, obligating MainStreet to complete Project construction, subject to the City's approval in its sole and absolute discretion. In the event MainStreet obtains construction financing from a lending institution, MainStreet's delivery of a Completion Guaranty in favor of the City that is in substantially similar form to the Completion Guaranty delivered to the lending institution will be deemed reasonably satisfactory to the City. In all cases, the City will subordinate its rights to that of any construction lender.

6.5 Construct the Project consistent with the requirements of the DOE-approved remediation plan to capture incremental cost savings for removal of contaminated soils.

6.6 Satisfy its MICA-related obligations set forth in Section 7.

6.7 Comply with currently applicable City code, as applied through the DA, in its submission of all permits or approvals needed to construct and complete the Project.

Several items listed above are addressed in greater detail below.

7. MainStreet Expectations Regarding MICA Obligations. The City, MainStreet, and MICA desire to include MICA in the Project if feasible as identified in this section. As outlined in this MOU, the Project requires the successful execution of numerous City obligations, including, conveyance of real property, environmental contamination clean-up, and resolution of outstanding zoning appeals. Each item is currently outstanding. In addition, MICA's involvement in this Project requires MICA's timely and successful execution of a fundraising strategy and schedule, a design schedule, ~~project~~-design and programmatic elements that can be successfully incorporated into the Project, and procurement of adequate funding to include MICA as part of the Project.

7.1 MICA-MainStreet MOU. To advance the Project, MainStreet will execute this MOU with the City and anticipates a separate MOU with MICA. MainStreet will begin MOU negotiations with MICA once: (1) MICA has a professionally prepared design schedule, programming requirements, and funding strategy and schedule; (2) the BP settlement is complete; (3) the City has confirmed and solidified the right to convey the necessary property to MainStreet as identified in this MOU, and (4) the rezone of the property is complete, with the City successful in resolving all pending appeals.

7.2 MICA-MainStreet MOU Contents. At this time, the MainStreet envisions that the MICA-MainStreet MOU will identify the following: (1) MICA project physical and programmatic needs, including: theatre, administrative offices, and parking; (2) key MICA-MainStreet agreement terms; (3) MICA's financial obligations and fundraising plan and schedule; (4) MICA's schedule of MICA activities to achieve its obligations under the MICA-MainStreet MOU; (5) dates certain for MICA to provide MainStreet with project specifications and succeed identified fundraising goals; (6) evidence, satisfactory to MainStreet, that MICA can demonstrate adequate parking for its intended use, operation, and hours of activity via a detailed parking analysis; and (7) any other items included by MICA and MainStreet.

7.3 MICA Fundraising Goals. ~~The anticipated deadline for MICA to fully achieve its fundraising goals is the point at which MainStreet's design development plans are 50% complete, which is expected to be approximately 12 months from the approval of this MOU and will be set forth in a specific schedule with the MICA team.~~ At the time of this City-MainStreet MOU, ~~it is anticipated the~~ MICA's fundraising target is \$35-40 million based upon MICA's estimated development costs briefings, although

that figure is subject to modification. MICA's estimated development costs include construction costs (70%); soft costs, including architect, interiors, consultants, etc. (20%); and fundraising and administration costs (10%). In order to provide timely commuter parking, MICA must achieve the following fundraising schedule:

7.3.1 Not less than \$7.5 million of dedicated, confirmed, and non-revocable funding within six months from the effective date of this MOU.

7.3.2 An additional \$22.5 million or 56.25% of dedicated, confirmed and non-revocable funding within twelve months from the effective date of this MOU, for a total of \$30 million.

7.3.3 All remaining amounts needed to construct, operate, and maintain MICA's portion of the Project in dedicated, confirmed, non-revocable funding within eighteen months from the effective date of this MOU, for a total of 100% (currently estimated at \$35-\$40 million)in dedicated, confirmed, non-revocable funding.

7.3.4 The figures in Section 7.3.2 and 7.3.3 will be adjusted upward or downward if MICA's project cost increases or decreases from \$40 million.

7.4 MICA's Participation in the Project. MainStreet desires to have MICA as a Project partner and, ultimately, as a Project participant. MICA's participation in the Project is dependent upon MICA achieving its obligations in the MICA-MainStreet MOU, including MICA achieving its financial and other obligations in the Project. MICA will not be a participant in the Project if it fails to achieve the goals, obligations, and timelines (including fundraising requirements of 7.3) set forth in this MOU.

7.5 Two Design Proposals. The DA will identify two design proposals. The first proposal will include space for MICA and the other will not, in the event that MICA withdraws or does not satisfy its obligations under the MICA-MainStreet MOU.

7.6 MainStreet Obligations to the City and MICA. First and foremost, MainStreet is obligated to timely provide commuter parking. To maintain the Project schedule, MainStreet will prepare only two designs for Design Commission review. MainStreet will not design and present a third (or hybrid) design proposal to the Design Commission. In addition, neither the City nor MainStreet are responsible for directly or indirectly assisting MICA to achieve its obligations under the MainStreet-MICA MOU, including MICA's fundraising obligations.

8. City and MainStreet Mutual Obligations. The Project requires the Parties to accomplish the following, subject to amendment in the DA by mutual agreement:

8.1 Subject to completion or MainStreet's waiver of Section 5 City Project Obligations, execution of PSA and a Project-specific DA and a SEPA threshold determination that formalizes the terms of this MOU with any and all applicable appeal periods having expired without appeal or successful resolution of any filed appeals.

8.2 Timely and efficiently process and response to all permits and other City approvals pursuant to the schedule set forth in Section 11 and its attached reference Exhibit E.

8.3 Ultimately, development and opening of all facilities concurrently with the completion of Mercer Island's new light rail station, subject to the City's timely completion of its project obligations and unavoidable ("force majeure") events beyond the control of the Parties.

9. Real Property / Purchase & Sale Agreement. The City and MainStreet will enter into a definitive PSA for the Property under which the City will convey the Property to MainStreet at no cost on the condition that MainStreet commits, through the PSA or a separate, binding agreement, to construct required commuter parking and other agreed Project components within agreed Project schedules. The PSA shall include the form of the DA that the Parties will execute after the Parties execute the PSA. Closing on the PSA shall occur upon the completion of the following:

9.1 The City has issued all permits necessary for the Project, with any and all applicable appeal periods having expired without appeal or successful resolution of any filed appeals.

9.2 A mutually acceptable DOE approval has been issued following all appeal periods, and the City has obtained or set aside appropriate funding to complete the remediation activities.

9.3 All associated agreements supporting the DA have been executed with any and all applicable appeal periods having expired without appeal or with successful resolution of any filed appeals.

9.4 Delivery of clean title of the Property except as agreed by MainStreet, including a legal opinion on title delivery.

9.5 The City providing MainStreet with all necessary easements or licenses at no cost to MainStreet.

MainStreet may waive any of the closing conditions identified above in its sole and absolute discretion.

10. Development Agreement Terms / Vested Regulations / Permit Approvals. The City and MainStreet intend to enter into a DA with a vesting term of 10 years from its Effective Date. The DA will identify all applicable zoning code, environmental regulations, development regulations (such as international building and fire codes), permit fees, impact fees, and other exactions applicable to the Project. MainStreet will be vested to the provisions in effect on the date of the DA, except (1) by mutual consent of all Parties; (2) to the extent required to address a serious threat to public health and safety, amendments to the applicable International and Uniform Building codes; and (3) new stormwater regulations mandated by state or federal law that are not addressed through the City's stormwater regulations that are in effect at the time this MOU is executed. The DA will be subject to City SEPA review. The City will issue a threshold determination for the DA that analyzes project-level impacts.

10.1 The Project requires a SEPA Determination, Transportation Concurrency Approval, and a Design Review Approval (under the conditions described below), prior to issuance of the construction permits.

10.2 The City will conduct a SEPA review and issue a SEPA threshold determination for the DA that analyzes project-level impacts.

10.3 Because of the public-private scope and its community-wide significance, the Project will be processed as a Type IV land use review, subject to approval by the Design Review Commission.

10.4 In order to achieve successful Project completion by the time Sound Transit opens the Mercer Island light rail station, The the City and the Design Commission must process permits expediently, make decisions quickly and at the earliest possible time and no later than the dates specified in this Understanding, make consistent and predictable decisions, and process Type IV land use decisions in a timely manner that is consistent with the code and law applicable to open public record hearings. To that end, the DA Council will amend the Code's administrative procedures, through the DA and to the extent

~~allowed under the City code, to~~ direct the Design Commission to issue a decision after no more than one study session~~s~~ and one final hearing, consistent with~~the schedule and process established in Section 11 and its referenced Exhibit E~~the agreed schedule and timeline below.²

10.5 The City's Hearing Examiner will hear administrative appeals of the Project, if any. Any administrative appeal shall be conducted expeditiously. At every stage in the proceedings, all parties shall make every effort to avoid delay. The Hearing Examiner will promptly issue the decision consistent with the timeline established by the Hearing Examiner's rules of procedure.

10.6 The Parties agree that no other land use decisions are required for this Project, independent of construction permits (for example, building permits, right-of-way use permits, etc).

11. Schedule and Process (MOU / DA / PSA/ Land Use / Consent Decree). Because neither Party has complete control over Ecology or WSDOT approvals for clean-up and transfer or for the outcome of the current Comprehensive Plan appeal, an exact schedule cannot, at this date, be confirmed. The Entitlement Schedule attached as Exhibit E provides the expected process for Project progress once the City Project Obligations defined in Section 5 are met or are waived by MainStreet; however, the Exhibit E Entitlement Schedule is an example of the Parties' best estimate as of the date of this MOU and remains subject to further change and refinement as Project development progresses.

To accommodate MICA's desire for space in the Project, MainStreet will prepare two Project designs that meet the requirements of the DA. For both designs, the City will conduct concurrent review of land use, building permit, and civil permits as well as Design Commission review and approval of such. The City also will expedite the entitlement process as identified in this section, including providing MainStreet with any necessary comments or corrections on permit submittals within 14 days of receipt. The City will continue permit and project review during any pending appeals. Throughout the Entitlement Schedule, MainStreet and the City commit to holding weekly telephonic or in-person meetings that include a MainStreet Principal (either President and/or Vice President) and the Director of Community Planning and Development, City Manager, and City's Project Manager.

12. Required MainStreet Responsibilities and Investments. MainStreet will diligently pursue the entitlement and construction of the Project. MainStreet will record an easement against the property that articulates the City's rights to parking. This easement will be in perpetuity and run with the land.

13. No Land Speculation. If MainStreet fails to timely construct the Project generally in accordance with the schedule, as may be mutually amended, the City will have repurchase rights at an agreed purchase price ~~set established~~ in the PSA or other acceptable agreement. Repurchase price will be based on Mainstreet's costs to date of exercise of repurchase rights and will not allow for profit, incidental, or consequential costs, and upon repurchase, Mainstreet will transfer title and ownership to all intellectual property and any site improvements constructed on or added to the Property.

14. Required City Responsibilities and Investments. The City will convey the Property to MainStreet and timely process all entitlements pursuant to the terms of this MOU. The City will join MainStreet in the defense of the Project for any and all appeals.

15. MOU Understanding Intent. This MOU is intended to outline the process, discussions, and review ~~between the Parties thus far, and that~~ These elements will be set forth, consistent with this MOU, in ~~a the DA, and the PSA, the Commuter Parking Easement, and other related documents, all of~~ which are

² The Development Services Group's code interpretation will also determine whether Design Commission hearings are procedural and not development regulations.

expected to be completed at the earliest practical date. This MOU does not constitute or guarantee approval of the Project by the City or City Council and it does not constitute any waiver.

16. Exclusive Negotiations. Upon mutual execution of this MOU, the City agrees to negotiate exclusively with MainStreet on the redevelopment of the Property. Because of the uncertainty regarding the dates for completion of City’s Project Obligations in Section 5.1.1—5.1.12, MainStreet may elect to defer or reduce some or all of its efforts to prepare the Project for development and to fulfill its Project Obligations until the City achieves further resolution of these issues. Recognizing these uncertainties, the City promises to refrain from marketing the Property and will not engage in discussions with other potential developers concerning the potential redevelopment of the Property, until the earlier of ~~two years~~36 months from the date of signing the MOU, or the execution of the PSA or the DA. In the event a SEPA appeal or an appeal of any of the permits under the heading, “Land Use Permits,” in the Exhibit E Entitlement Schedule occurs, the ~~two-year~~36 month exclusive negotiation period will be extended by the lesser of the additional days of delay caused by the appeal(s) or 180 calendar days.

17. Nonbinding Provisions. Except for Section 16, no other obligation or liability is intended to be created by this MOU or any written communication or negotiations between the Parties and that each Party is proceeding at its own risk, subject to the specific binding provision. Neither Party will be bound by the terms of this MOU until the DA has been executed. Each Party shall bear its own costs and expenses incurred in connection with the negotiation, preparation, and execution of the DA.

18. Feasibility Documents. Subject to MainStreet’s obligations in subsection 6.~~4d~~, MainStreet shall retain ownership of all documents and work product provided by MainStreet and its consultants and City shall return all that work product in the event the transaction does not proceed.

19. Authority. Each Party respectively represents and warrants that it has the power and authority, and is duly authorized, to enter into this MOU on the terms and conditions herein stated, and to deliver and perform its obligations under this MOU.

20. Entire Agreement. This MOU represents the entire agreement of the Parties with respect to its subject matter. There are no other agreements, oral or written, except as expressly set forth in this MOU, which supersedes all previous agreements, oral or written.

21. Counterparts. This MOU may be signed in any number of identical counterparts, each of which shall be considered an original even if they are transmitted by electronic means and taken together shall be considered to constitute one and the same instrument.

22. Effective Date. The Effective Date of this MOU shall be the date when the last representative of the City or MainStreet executes and transmits a copy of the signed MOU to the other Party.

SIGNATURES ON FOLLOWING PAGE

CITY OF MERCER ISLAND

MAINSTREET PROPERTY GROUP, LLC

By: Jessi Bon, Interim City Manager

By: Kelly Price, President

Date: _____

Date: _____

Authorized by Mercer Island City Council Motion on _____, 2019.

EXHIBIT A

**LEGAL DESCRIPTION
(PARCEL A-1)**

A-1:

THAT PORTION OF WSDOT TURNBACK PARCEL 121, PER QUIT CLAIM DEED RECORDED UNDER RECORDING NO. 20000425001234, RECORDS OF KING COUNTY, WASHINGTON, LYING EAST OF A LINE 113.50 FEET EAST, AS MEASURED AT RIGHT ANGLE FROM AND PARALLEL TO THE EAST MARGIN OF 78TH AVE. SE.

AREA CONTAINS 15,776± SQ. FT.

EXHIBIT B

LEGAL DESCRIPTION
(BP/ARCO (f/k/a TULLY'S) PROPERTY)

BP/ARCO (TULLY'S) PROPERTY: (531510-1235)

LOT 1 AND THAT PORTION OF LOT 2, BLOCK 15, MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY, WASHINGTON; LYING NORTHERLY OF THE NORTH MARGIN OF NORTH MERCER WAY, AS ESTABLISHED BY DEED RECORDED UNDER RECORDING NO. 2561652; EXCEPT THOSE PORTIONS OF SAID LOT 1 AND 2 CONDEMNED FOR PRIMARY STATE HIGHWAY NO. 2 IN KING COUNTY SUPERIOR COURT CAUSE NO. 312351; AND EXCEPT THE WEST 113.5 FEET IN WIDTH THEREOF.

(PER 7800 PLAZA, A CONDOMINIUM, AMENDMENT NO. 1 TO SURVEY MAP AND PLANS REC. NO. 20120418001879)

EXHIBIT C

LEGAL DESCRIPTION
(PARCEL A-2)

A-2:

THAT PORTION OF MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY WASHINGTON;

COMMENCING AT THE INTERSECTION OF 78TH AVE SE. AND SE. 27TH ST;

THENCE N 00°11'03" W, ALONG THE CENTERLINE OF SAID 78TH AVE SE, A DISTANCE OF 271.69 FEET TO A POINT ON THE NORTH LINE OF PARCEL 11, PER QUIT CLAIM DEED RECORDED UNDER RECORDING NO. 2000425001234, RECORDS OF KING COUNTY, WASHINGTON;

THENCE S 69°09'37" E, ALONG SAID NORTH LINE TO A POINT ON THE NORTHERLY PRODUCED EAST RIGHT OF WAY MARGIN OF 78TH AVE SE., A DISTANCE OF 32.14 FEET;

THENCE N 00°11'03" W, ALONG SAID NORTHERLY PRODUCED E. MARGIN 38.21 FEET;

THENCE S 62°42'30" E, A DISTANCE OF 127.92 FEET AND THE POINT OF BEGINNING OF PARCEL

A-2; THENCE CONTINUING S 62°42'30" E 150.02 FEET;

THENCE S 26°41'21" W 24.70 FEET TO A POINT ON THE NORTH LINE OF SAID PARCEL

11; THENCE N 63°18'39" W 136.69 FEET ALONG SAID NORTH LINE;

THENCE N 00°11'03" W 29.46 FEET TO THE POINT OF

BEGINNING. AREA CONTAINS 3,649± SQ. FT.

EXHIBIT D

SURVEY



EXHIBIT EC

ENTITLEMENT SCHEDULE³

MOU		
Milestone	Process	Timing
X	Vetting of MOU with City Council	
	Submittal of Draft MOU	
	City Council Approves MOU	End of June/Beginning of July (7 days after MOU submittal)
Development Agreement (DA), Purchase and Sale Agreement (PSA), and Commuter Parking Easement with Joint Use and Maintenance Provisions ("CPE")		
	Submittal of SEPA checklist for the "maximum impact" of a future project along with a Draft DA and Draft PSA (together with supporting reports and documentation - e.g. traffic studies, etc.)	Prior to Work Session 1
	SEPA review comments from City (if any) to applicant	30 days after submittal of SEPA checklist and supporting reports / documentation
	Submittal of SEPA response based on staff review of SEPA Material	7 days after SEPA review comments sent to applicant
	First City Council Work Session: Review and preliminary direction re: edits for the PSA, DA and CPE terms	21 days after submittal of draft DA and PSA terms
	Submittal of revised DA / PSA / DA/CPE terms based on the First City Council Work Session	7 days after Work Session 1
	Second City Council Work Session: Review of revised PSA /DA/CPE terms materials and final direction re: edits	30 days after Work Session 1
	Submittal of revised PSA/DA/ CPE terms based on Second City Council Work Session	7 days after Work Session 2
	SEPA Threshold Determination issued	7 days after submittal of staff review

³ This schedule does not define when the two additional public meetings defined in Section 4 will occur.

X	City Council Authorizes PSA	At least 7 days following issuance of the SEPA threshold determination
	Notice of Public Hearing on the DA w/draft substantive CPE terms.	30 days before the public hearing on the development agreement
	Public Hearing on the DA w/draft substantive CPE terms.	45 days after Work Session 2
X	City Council Approves DA w/draft substantive CPE terms.	14 days after DA public hearing
	Submittal of draft CPE terms	Concurrent with submittal of Design Documentation
	City reviews CPE and approves (Council approval required if substantive terms vary from those in the DA).	21 days after submittal of draft CPE submittal
X	MainStreet and City execute CPE.	7 days after City Council approves CPE

Land Use Permit⁴ (may run concurrently or over lap with PSA/DA/CPE process above)

	Submittal of Draft Design Documentation: Design Commission Study Session	No timing
	First Design Commission meeting – Study Session	30 days after submittal of design documentation
	Follow-Up submittal of draft design documents to respond to Study Session (if needed)	14 days after first study session
	Follow-Up Design Commission meeting – Study Session (If needed)	30 days after follow up submittal
	MainStreet submits a complete application for Land Use and Design Review Approval	30 days after last Design Commission Study Session
	City review to confirm complete application for Land Use and Design Review approval	14 days after application ⁵
	Issue Notice of Application (NOA)	21 days from application submittal
	Public Comment period	30 days after NOA
	1st Round of Design Review with City	51 days from complete application
	2nd Round of Design Review with City	21 days after Applicant responds to 1st round ⁶ comments

⁴ Land Use Permit Schedule assumes no appeal of SEPA determination

⁵ Mercer Island code provides 28 days, but this could likely be done in 14 days.

⁶ Sometimes there are multiple iterations of review comments – Mercer Island will prioritize meeting with the applicant to avoid this.

X	Notice of Public Hearing	30 days prior to the Public Hearing
	Second Design Commission Public Hearing — Design Review Approval	51 days after Applicant responds to 1 st round comments
	Design Commission Issues Decision	5 days after Second Design Commission Meeting
	Appeal period of Design Review Approval	14 days after Design Commission Recommendation

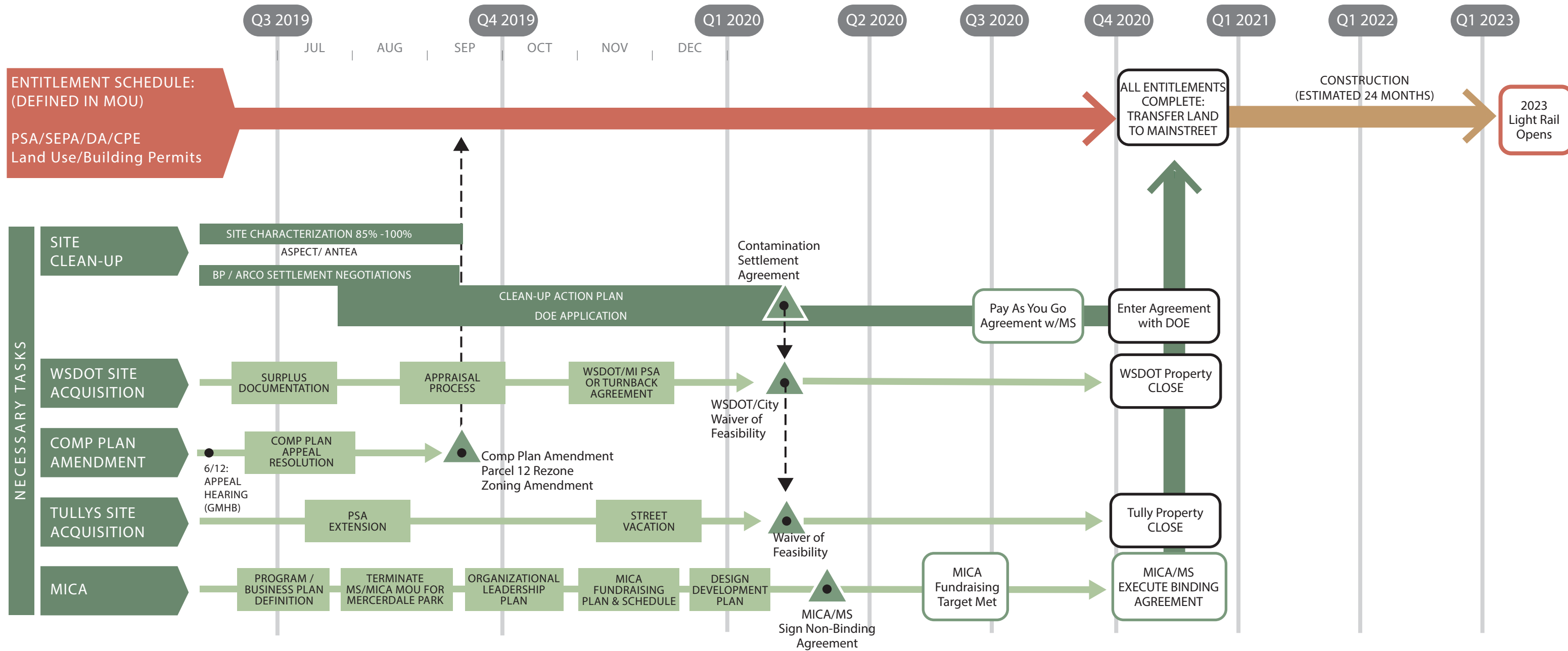
Building Permit		
X	MainStreet and City meet to review Permit Application requirements	After Submittal of Land Use Application
	Grading / Utility Permit complete submittal of construction drawings	After Submittal of Land Use Application
	Foundation Permit complete submittal of construction drawings	After Submittal of Land Use Application
	Building Permit complete submittal of construction drawings	After Submittal of Land Use Application
	Grading / Utility Permit issued	After two rounds of review and comments
	Foundation/Shoring Permit issued	After two rounds of review and comments
	Building Permit issued	After two rounds of review and comments
	Appeal Period of Building Permit	14 days after Permits are Issued
Construction Process ⁷		
	Remediation work	Following DOE Agreement

⁷ All construction milestones are contingent upon the Department of Ecology’s approval of a hazardous waste cleanup plan as provided in Section 5.1.3 of the MOU, and the Parties completing any required remediation work. Any delay to Ecology approval will delay project completion. The City acknowledges that it is solely responsible for securing approval from the Department of Ecology.

X	Grading/Utility Work Start	Following completion of remediation/excavation work
	Concrete Work	Following completion of grading work
	Vertical Construction	Following completion of vertical construction
	Certificate of Occupancy	Prior to opening of Mercer Island Light Rail Station

Mercer Island Commuter Parking and Mixed-Use Development

Workflow DRAFT: 6/13/19





**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND, WA**

**AB 5582
June 18, 2019
Regular Business**

AGREEMENT TO TERMINATE MEMORANDUM OF UNDERSTANDING (MOU) WITH THE MERCER ISLAND CENTER FOR THE ARTS (MICA)	Action: Authorize the Interim City Manager to execute the proposed Termination Agreement of the MICA MOU	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
---	--	---

DEPARTMENT OF	City Manager (Jessi Bon)
COUNCIL LIAISON	n/a
EXHIBITS	1. MICA Memorandum of Understanding (MOU) 2. DRAFT Termination Agreement
2019-2020 CITY COUNCIL PRIORITY	3. Support the Leadership Team’s Work Plan
APPROVED BY CITY MANAGER	

AMOUNT OF EXPENDITURE	\$	n/a
AMOUNT BUDGETED	\$	n/a
APPROPRIATION REQUIRED	\$	n/a

SUMMARY

On February 22, 2016, the City of Mercer Island (City) and the Mercer Island Center for the Arts (MICA) entered into a memorandum of understanding (MOU) establishing the process to complete the environmental review for MICA’s center for the performing and visual arts and for arts education programs (Center) that was proposed to be sited on land owned by the City at or near Mercerdale Park (Premises). A copy of the MOU is attached as Exhibit 1. In addition to agreeing to the environmental review process, the MOU included also the parties’ contemplation to enter into a lease agreement for the Premises at the conclusion of the environmental review.

Since signing the MOU, the parties have stopped actively pursuing a lease agreement to site the Center at the Premises. The parties are instead actively negotiating with a private developer to construct the Center as part of the public-private commuter parking and mixed-use development project in Town Center. As a result of this new opportunity and change in circumstance, the MOU that the parties signed neither furthers the parties’ goals, nor serves any purpose for the parties.

During the study session on April 16, 2019 on the proposed public-private commuter parking and mixed-use development project, the City Council asked staff to prepare an agreement to terminate the current MOU with MICA. A copy of the DRAFT Termination Agreement requested by the City Council is attached as Exhibit 2.

The Termination Agreement has not yet been executed by MICA. Based on preliminary discussions with MICA, MICA wants to wait until the City has finalized and approved its MOU with the private developer for the proposed public-private commuter parking and mixed-use development project, before executing the

Termination Agreement. Meanwhile, staff recommends that the City Council authorize the Interim City Manager to execute the Termination Agreement so that once the MOU with the private developer is approved, the MICA MOU can be expediently terminated.

RECOMMENDATION

Interim City Manager

MOVE TO: Authorize the Interim City Manager to execute the Termination Agreement, in substantially the form attached as Exhibit 2 hereto, to terminate the February 22, 2016 MOU with MICA.

Memorandum of Understanding Regarding a Center for the Arts

^{22nd} This Memorandum of Understanding Regarding a Center for the Arts ("MOU"), dated this day of ~~February~~ 2016 ("Effective Date"), is entered by and between the CITY OF MERCER ISLAND, a Washington municipal corporation ("City"), and the MERCER ISLAND CENTER FOR THE ARTS, a Washington nonprofit corporation ("MICA"). The City and MICA are referred to collectively as the "Parties."

RECITALS

A. The City owns property commonly known as the "Recycling Center," "Bicentennial Park" and the "Northwest Native Garden," all located generally at the southwest corner of Mercerdale Park near the intersection of 77th Ave. SE and SE 32nd St., in the City of Mercer Island, Washington.

B. The City and MICA share a long-term mission to nurture, promote, and support high-quality cultural arts activities for the community. MICA's mission is to construct and operate a center for the performing and visual arts and for arts education programs, including theatres, a recital hall, classrooms, a food and beverage venue and other arts and arts education spaces (the "Center"). MICA will be solely responsible for the cost of design, permitting, site development, construction and operation of the Center. The Parties intend that the Center will allow Mercer Island residents and people from throughout the Puget Sound area the opportunity to gather, to converse and create, to celebrate excellence in the lively arts, and to inspire generations of artists, audiences, and students through exceptional live performances, special events, exhibitions, and educational experiences.

C. Subject to the satisfaction of various conditions precedent, including but not limited to environmental review as set forth in Section 3 below, the Parties desire to enter into an Agreement to Lease Subject to Certain Conditions Precedent in substantially the form attached hereto and incorporated herein by reference as Exhibit 1 (the "Lease Agreement") to allow MICA to construct and operate the Center on the Premises legally described in Exhibit A to the Lease Agreement (the "Premises").

D. This MOU is intended to be a binding and enforceable agreement of the Parties establishing the process to be followed by the Parties in order to complete environmental review of the Center. As appropriate following the completion of such environmental review and related appeals and/or appeal periods, the Parties may approve the Lease Agreement at Exhibit 1. Taken together, both this MOU and the Lease Agreement reflect the mutual understandings of the Parties as to the agreements, actions, permits, and/or approvals lawful and necessary to accomplish the financing, permitting, construction, lease, operation, maintenance use and occupancy of the Center (collectively, the "Project"). The Parties intend to actively participate and to work together collaboratively, in good faith and with due diligence, to carry out the

process described herein consistent with this MOU. These undertakings are personal to the Parties, and this MOU shall not be assigned to any other person or entity unless both Parties agree.

UNDERSTANDINGS

1. Purpose and Term of this MOU Agreement. This MOU sets forth the environmental review to be completed with respect to the Center. This MOU will terminate upon the earlier of (a) the completion of the environmental review and related appeals and/or appeal periods described in Section 3 herein resulting in an outcome that is not reasonably acceptable to the Parties; or (b) the Effective Date of the Lease Agreement substantially in the form at Exhibit 1; or (c) in the event of a material adverse condition as specified in Section 5 below.

2. Location. MICA is proposing to construct and operate the Center on the Premises, which comprises approximately 41,346 square feet of land within the southwest corner of Mercedale Park. Considering that the Premises is located on a portion of public park land owned by the City, the City hereby authorizes MICA to apply for SEPA review at its sole cost, and the City will evaluate this location as part of the SEPA review for the Center as more particularly described in Section 3 below.

3. Environmental Review. The Parties acknowledge that the Center and any proposed lease of the Center is subject to environmental review and potential mitigation under the State Environmental Policy Act, Chapter 43.21C RCW, and the state and local implementing rules promulgated thereunder (collectively, "SEPA"). Before the City Council considers approval of the Lease Agreement at Exhibit 1, the City will complete a full SEPA review, including but not limited to a comprehensive traffic impact analysis, identification of adequate parking to meet the City code, and identification of possible mitigating actions, including but not limited to mitigation for impacts to the nearby Category III wetland and its associated buffer and impacts related to any geotechnical hazards. Further, prior to the City Council's consideration of approval of the Lease Agreement, any environmental-related appeals related to the Center must result in an outcome that is reasonably acceptable to the Parties. The City may not take any action within the meaning of SEPA except as authorized by law, and nothing in this MOU is intended to limit the City's exercise of substantive SEPA authority. MICA will reimburse the City for all costs incurred by the City as part of the SEPA review, including but not limited to peer reviews, and MICA will be solely responsible for funding any required mitigation imposed through the City's exercise of substantive SEPA authority.

4. Approval and Execution of the Lease Agreement. Provided the environmental review set forth in Section 3 above is satisfied, MICA's President, after approval of the MICA Board of Directors, and the City Manager, after approval of the City Council, may approve and execute the Lease Agreement in substantially the form at Exhibit 1.

5. Material Adverse Conditions. In the case of a natural disaster, the discovery and remediation of any hazardous materials on the Premises and unanticipated costs associated

therewith, or a significant, material change in the legal or financial position of MICA such as disincorporation, bankruptcy or insolvency and in the event the Parties are unable to agree in good faith on viable alternatives for addressing any of the foregoing material adverse conditions, this MOU will terminate upon at least thirty (30) days' prior written notice at the option of either Party in the sole discretion of the terminating Party.

6. **Amendments.** The Parties anticipate that the terms of this MOU may need to be modified in the future. MICA's President, after approval of the MICA Board of Directors, and the City Manager, after approval of the City Council, are hereby authorized to approve mutually agreed amendments to this MOU and to supplement this MOU where necessary to improve the administration of this MOU and the collaboration between the Parties. All amendments must be in writing signed by the President of MICA and the City Manager.

7. **Counterparts.** The Parties may execute this MOU in two or more counterparts, which shall, in the aggregate, be signed by both Parties. Each counterpart shall be deemed an original instrument as against any Party who has signed it.

8. **Notices.** All notices and communications between the Parties will be between the persons identified immediately below or such successor persons as may be identified in writing by either Party. Each of the persons designated below and any successors will have authority to bind their respective organizations or will obtain any necessary authority on an ad hoc basis and in a timely manner. Each such notice or other communication which may be or is required to be given under this Agreement shall be in writing and shall be deemed to have been properly given when delivered personally or by email during normal business hours to the party to whom such communication is directed, or three (3) days after being sent by regular mail, to the appropriate Party at the following address:

If to MICA:

Mercer Island Center for the Arts
P.O. Box 1702
Mercer Island, WA 98040
Attn: John Gordon Hill, President
Email: jghill@hillfilm.com

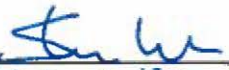
If to the City:

City of Mercer Island
9611 SE 36th St.
Mercer Island, WA 98040
Attn: City Manager
Email: Kirsten.taylor@mercergov.org

Either party may change its address for notices from time to time by notice to the other party given as above provided.

IN WITNESS WHEREOF, both the City and MICA have caused this MOU to be executed by authorized officers as of the date first written above.

CITY OF MERCER ISLAND
a Washington municipal corporation

By: 
Title: Interim City Manager

Approved as to form:

By: 
Title: City Attorney

MERCER ISLAND CENTER FOR THE ARTS
a Washington nonprofit corporation

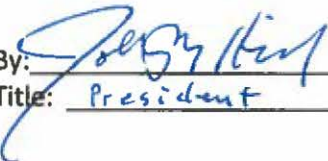
By: 
Title: President

EXHIBIT A

AGREEMENT TO LEASE SUBJECT TO CERTAIN CONDITIONS PRECEDENT

THIS AGREEMENT TO LEASE SUBJECT TO CERTAIN CONDITIONS PRECEDENT ("Agreement") is made as of the ___ day of _____, 2016 ("Effective Date"), by and between the CITY OF MERCER ISLAND, a Washington municipal corporation ("City"), and the MERCER ISLAND CENTER FOR THE ARTS, a Washington nonprofit corporation ("MICA") (collectively referred to herein as the "Parties").

PREAMBLE

The City and MICA share the long-term mission of building a vibrant, socially-engaged community on Mercer Island. One of the City's missions, as stated by its Arts Council, is "to nurture, promote, and support high-quality cultural arts activities for the Community." MICA's mission is to provide "a cultural focal point on Mercer Island where Islanders and people from throughout the Puget Sound area gather to converse and create, to celebrate excellence in the lively arts, and to inspire generations of artists, audiences, and students through exceptional live performances, special events, exhibitions, and educational experiences." To fulfill those missions, the Parties will need to collaborate as described in this Agreement. Therefore, both Parties commit to a working relationship throughout the term of this Agreement based on the principles of mutual cooperation and goodwill, always with the ultimate interests of the people of Mercer Island in mind. For example, and not by way of limitation, the Parties may work together to improve the environmental conditions in and appearance of Mercerdale Park, improve community facilities located within Mercerdale Park and Bicentennial Park, and plan and present existing and new community activities and events.

RECITALS

- A. The City owns property commonly known as the "Recycling Center," "Bicentennial Park" and the "Northwest Native Garden," located generally at the southwest corner of 77th Ave. SE and SE 32nd St., Mercer Island, Washington;
- B. A portion of said property has been designated and legally described in Exhibit A, which is incorporated herein by this reference (the "Premises");
- C. The Premises are between and adjacent to the grassy area of Mercerdale Park and the Mercerdale Hillside (collectively "Mercerdale Park");
- D. Subject to the City's land use regulations and building permit processes in effect at the time a complete application for a building permit is submitted, MICA desires to lease the Premises from the City for purposes of constructing and operating a center for the performing and visual arts and for arts education programs, including theatres, a recital hall, classrooms, a food and beverage venue and other arts and arts education spaces (the "Center"), the construction of which will be managed and financed by MICA and which will then be operated and controlled by MICA;

- E. The City will benefit by having access to the Center and will be able to use the Center for its own arts, educational and recreational purposes as well as to benefit the Mercer Island Farmers Market and Mercerdale Park users;
- F. The Mercer Island community will also benefit by the provision of arts facilities that will replace the youth theatre venue formerly located at SE 40th St. on what is commonly referred to as the Mercer Island School District's North Mercer Campus that was lost due to the construction of a new elementary school; and
- G. The leasing of the Premises to MICA will not materially interfere with the continued use of Mercerdale Park for recreational and park purposes, nor will it interfere with the adjacent operation of the Farmer's Market or the City's annual Summer Celebration events.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the City and MICA mutually agree as follows:

1. PURPOSE OF AGREEMENT.

This Agreement provides for the leasing of the Premises to MICA and for the development, operation and maintenance of the Center by MICA on the Premises. This Agreement is also intended to provide a framework for the City and MICA as to the use of parts of the Center by the City at certain times as well as to provide access, as required by the City, to certain parts of the Center by the public and by certain other entities for the purposes herein provided.

2. PROJECT DESCRIPTION.

2.1. Construction and Operation of the Center. Subject to the provisions of this Agreement, MICA shall design, construct, maintain and operate the Center. The design, construction, maintenance and operation of the Center shall be at the sole responsibility of MICA. The design and construction of the Center shall be subject to the following considerations and provisions:

2.1.1 During the development of the Center design, the schematics and draft plans and specifications shall be provided to the City's Representative (identified in Section 27) for review when reasonably requested by the City so the City can confirm that there are no conflicts with the City's desired use of Mercerdale Park and that the Center project will be aesthetically consistent with Mercerdale Park.

2.1.2 MICA shall regularly communicate with the City's Representative during Center design, preconstruction activities, construction activities, and post-construction activities when reasonably requested by the City's Representative. Notwithstanding this

regular communication, MICA shall provide the City's Representative with written notice of its intent to begin construction at the Premises not less than thirty (30) days prior to the commencement of such construction and shall use its best efforts to coordinate construction activities on the Premises with City activities at Mercerdale Park.

2.1.3 The final design of the Center project – including but not limited to signage, landscaping, traffic flow and parking – and any subsequent plans and specifications for additions or improvements thereto, shall be subject to the City's land use regulations and building permit processes, including Design Commission review if applicable, in effect at the time a complete application for a building permit is submitted.

2.1.4 Prior to commencing construction, MICA shall obtain the approval of the City's Representative for any temporary use of City property other than the Premises in order to facilitate the construction of the Center (e.g., staging areas) and for any interference that construction will cause in the use of Mercerdale Park or other City property or public right-of-way.

2.1.5 Prior to commencing construction, MICA shall require the prime contractor with which it contracts to build the Center to post a payment and performance bond in the amount of 100% of the amount of the prime contract as security to ensure the Center is completed and all laborers and materialmen are paid. Surety shall be licensed to conduct business in the State of Washington and shall be named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. In addition, MICA shall require the prime contractor to procure and maintain insurance, as required in this Section, without interruption from commencement of the contractor's work through the term of the construction contract and for thirty (30) days after the Substantial Completion date, as defined in Section 3.7.4, unless otherwise indicated herein. The prime contractor's required insurance, except for the Builders Risk policy which may be procured by MICA at its option, shall be of the types and coverage as stated below:

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.

Commercial General Liability insurance shall be as least at broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. MICA shall be named as an additional insured under the Contractor's Commercial General Liability insurance

policy with respect to the work performed for the MICA using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage. The city shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy using ISO Additional Insured – Designated Person or Organization endorsement CG 20 26 07 04 or substitute endorsement providing as least as broad coverage.

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

Builders Risk (a/k/a course of construction) insurance covering interests of MICA, the contractor, subcontractors, and sub-subcontractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance shall include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the contractor. Higher deductibles for flood and earthquake perils may be accepted by MICA upon written request by the contractor and written acceptance by MICA. Any increased deductibles accepted by the MICA will remain the responsibility of the contractor. The Builders Risk insurance shall be maintained until MICA has granted Substantial Completion of the Center.

The prime contractor shall maintain the following insurance limits:

Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions

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

The prime contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respects MICA. Any insurance maintained by MICA shall be excess of the prime contractor's insurance and shall not contribute with it.

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

Prime contractor shall furnish MICA with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the prime contractor before commencement of the work. Upon request by MICA, the prime contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.

The prime contractor shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of the prime contractor-provided insurance as set forth herein, except the prime contractor shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. The prime contractor shall ensure that MICA is an additional insured on each and every subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

The prime contractor shall provide MICA and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

Failure on the part of the prime contractor or any subcontractor to maintain the insurance as required shall constitute a material breach of contract, upon which MICA may, after giving five business days' notice to the contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to MICA on demand, or at the sole discretion of MICA, offset against funds due the contractor from MICA.

2.2 Compliance with Laws; Permits; Related Legal Proceedings. MICA acknowledges that a building permit for the Center could not be issued by the City under existing zoning law, that applying for a building permit will first require a code text amendment for the special purpose Public Institution ("P") Zone in Mercer Island City Code Section 19.05.010(A) to include a center for the performing and visual arts as a permitted use within the zone, and that by its execution of this Agreement, the City is not committing to the code text amendment or, if the code text amendment is adopted, that the amended zoning code would permit construction of the Center at the Premises. MICA shall abide by all applicable laws, regulations and ordinances

in constructing, operating and maintaining the Center and in using the Premises, including, without limitation, possessing all required licenses, certifications, or other approvals (whether required to be held by MICA as an entity or by MICA's individual employees, volunteers, subtenants, or other agents) relevant to MICA's use of the Premises for specific programs. In addition, MICA agrees to the following:

2.2.1 MICA shall obtain any necessary approvals and permits as may be required by any applicable law or regulation prior to beginning construction on the Premises. The costs of all fees connected with acquiring required approvals and permits shall be the exclusive responsibility of and shall be paid by MICA.

2.2.2 Without limiting Section 2.2.1 above, MICA shall, at its sole cost and expense, perform all actions necessary to comply with any and all traffic mitigation measures and traffic management requirements that may be required as a condition of MICA's use of the Premises for the Center and/or the construction of the Center on the Premises. The City shall be responsible for implementing traffic management related to any City use of the Center.

2.2.3 MICA shall be required to operate the Center for the Term of the tenancy under this Agreement consistent with Section 3 of this Agreement. During the Term, MICA shall be solely responsible for all costs associated with operation and maintenance of the Center (except for the costs the City has agreed to pay as detailed in Sections 5.2, 9.1 and 10.4). In addition, following Substantial Completion (as defined in Section 3.2 below), MICA shall not vacate or abandon the Premises or reduce operations and maintenance at the Center to such an extent that it is no longer satisfactorily or successfully fulfilling its mission as specified in this Agreement.

2.3 Project Funding. Except as otherwise provided in this Section 2.3, MICA shall meet all funding requirements set forth in this Agreement and Section 3.7 (Timeliness) below, including but not limited to the requirement to have raised, received pledges or obtained financing for one hundred percent (100%) of the Center's projected total construction costs prior to the start of construction. The City shall be responsible only for its legal and consulting costs related to the negotiation and approval of this Agreement and any associated administrative and judicial appeals.

Notwithstanding the foregoing, nothing in this Agreement shall prevent the City from voluntarily contributing additional funds to the Project, making other off-site improvements benefitting the Project and the Center, or providing in-kind services to MICA.

2.4 Public Benefits. In partial consideration for this Agreement, MICA covenants and agrees to include within the Center the following public benefits and features that would have otherwise required the expenditure of public funds:

2.4.1 Improve the condition, and appearance of Mercedale Park:

- removal of the old Recycling Center buildings and pavement unless removed by Mercer Island School District #400;
- lighting, walkway and improvements within the Premises;
- wetlands and drainage enhancement and mitigation as may be required under applicable regulations; and
- public restrooms to replace the existing outdated restrooms.

2.4.2 Preserve, enhance and promote new community facilities at or near the current Recycling Center:

- public plaza to include improved park amenities (benches, tables, waste and recycling receptacles and drinking fountains) or other landscaped outdoor open spaces;
- replacement of portions of the Northwest Native Garden that have fallen into disrepair;
- replacement of portions of Bicentennial Park amenities (such as the flag pole and seating area) that have fallen into disrepair;
- outdoor theatre stage that faces the grassy area of Mercedale Park for public performances; and
- an indoor/outdoor eating venue that will be open to the public to the extent the venue remains economically viable. MICA will have the sole determination as to whether the venue is economically viable and the sole authority to curtail its operations and/or close the venue, but a minimum of thirty days prior to closing the venue or curtailing its operations, MICA will give written notice to the City of its intent and shall consult with the City's Representative to allow the City a reasonable opportunity to make proposals which may enable the eating venue to remain in operation.

2.4.3 Promote the on-going success of existing and new community activities at Mercedale Park:

- hot and cold water sinks, meeting applicable regulatory requirements, and electricity outlets for Mercer Island Farmer's Market vendors as long as the Farmer's Market operates on Mercer Island;
- sinks and electricity outlets will also be made available for the annual Mercer Island Summer Celebration events and other City-sponsored outdoor use of Mercedale Park; and
- on-site storage for Mercer Island Farmer's Market equipment as long as the Farmer's Market operates on Mercer Island.

2.4.4 Provide the City access to the Center:

- use of spaces within the Center for City-related public meetings;

- use of classroom space for City-sponsored art classes;
- use of the Center as a back-up Emergency Operations Center (“EOC”) (any additional costs related to such use will be paid by the City); during an emergency, use of the Center as a back-up EOC shall take precedence over all other Center uses; and
- other purposes dependent on the needs of the City.

2.5 Commencement Date: The term “Commencement Date” shall mean the date of the conveyance of a leasehold interest in the Premises to MICA, which date will be the date of the issuance of the Building Permit for the Center. MICA acknowledges that the Building Permit cannot be issued until all legal requirements and contractual conditions precedent have been satisfied.

3. **RIGHT TO USE REAL PROPERTY FOR CENTER.**

3.1 Lease of Premises After All Conditions Precedent Are Satisfied. The City represents and warrants that it has full right and power to enter into this Agreement, and to convey the leasehold interest described herein to MICA on the terms and conditions herein contained. If and only if MICA has first satisfied all of the requirements in this Agreement that are specified as being a condition precedent to issuance of the Building Permit and the happening of the Commencement Date, the City hereby leases to MICA and MICA leases from the City, as provided below, the Premises “as is” (subject to Section 3.4 below), together with all improvements thereon in the condition in which it now exists.

3.2 Term. The initial term of the tenancy under this Agreement shall be as follows:

3.2.1 Beginning on the Commencement Date and continuing for the period of time required to construct the Center and achieve Substantial Completion as provided in Section 3.7.4; plus,

3.2.2 Fifty (50) years beginning at Substantial Completion. The fifty (50) year initial occupancy term shall commence upon the City's receipt of written notice from MICA that the Center is substantially complete. The written notice shall be provided by a Commencement Certificate, the form of which is attached as Exhibit B. Notwithstanding MICA's duty to provide the City with written notice that the Center construction is substantially complete, the City may request an official determination regarding whether construction of the Center is substantially complete by contacting MICA's Designated Representative, as established in Section 27, and, if necessary, through use of the dispute resolution procedures contained in Section 12. The term "Substantial Completion" shall mean the date when the City has issued a temporary certificate of occupancy for the Center or at any time in which the Center is fully occupied by MICA, whichever is earlier. MICA shall be deemed to have accepted possession of the Premises on the Commencement Date. Prior to the Commencement Date and subject to Section 3.10,

MICA shall have no right to possess or otherwise occupy the Premises or, without prior approval of the City, place any items of personal property on the Premises.

3.3 Option to extend. MICA shall have the option to extend the term of the tenancy under this Agreement up to three (3) periods of ten (10) years each under the same terms and conditions as during the initial term. The initial term, as such may be extended, is referred to herein as the "Term." MICA shall be deemed to have exercised each such option unless it gives notice to the City of its intention to not exercise such option at least six (6) months prior to the expiration of the initial term and any extensions thereto; and provided further that, the approval and commencement of any option term is contingent on MICA's completion of all routine and extra maintenance necessary to maintain the Center in a "first-class" manner appropriate for the Center's age and consistent with Section 9. For purposes of determining whether MICA has met its maintenance obligations, MICA and the City shall mutually agree upon a professional inspection team, which shall inspect the Center and report on its condition. MICA shall be solely responsible for all costs associated with such inspection. Any further extensions of this Agreement are to be mutually agreed upon between the Parties, and the City agrees to negotiate in good faith if MICA requests extensions of the term. Any extension shall be governed by the terms and conditions of this Agreement, except if MICA exercises an option to extend, it will have one fewer option to extend the tenancy under this Agreement than it had prior to exercising such option.

3.4 Environmental Responsibility. Nothing contained in this Agreement shall be construed as MICA's agreement to assume any liabilities or obligations the City may have under applicable law as a consequence of the Release (as defined in Section 15, below) of any Hazardous Substance (as defined in Section 15, below) onto, into or under the Premises, or any other environmental contamination of the Premises, prior to the Commencement Date. MICA has obtained, at its sole cost and expense, a Phase I Environmental Assessment ("Phase I EA") of the Premises and has provided the City with a copy of the Phase I EA. The Phase I EA has found no evidence of any contamination on the Premises and does not recommend any further investigation. The City and MICA have determined that a Phase II Environmental Assessment ("Phase II EA") is not necessary.

3.5 Wetlands. The Parties acknowledge the existence of a Category III wetland adjacent to the Premises and a buffer zone for that wetland on a portion of the Premises. MICA will be solely responsible for any costs of any mitigation which may be required for the construction of the Center.

3.6 Modifications to Premises. The City recognizes that the existing condition of the Premises will be modified by the construction and development of the Center.

3.7 Timeliness. This Agreement is conditioned upon MICA's covenant to construct the Center in a timely manner, consistent with the following:

3.7.1 MICA shall have received contributions or pledges equal to at least seventy percent (70%) of the Center's projected total construction costs, as defined in this Section 3.7.1, within five (5) years after the Effective Date of this Agreement; provided that, the City may grant extensions as required if MICA demonstrates, in the City's sole discretion, that it has engaged in good faith efforts to secure the funds and has reasonable expectations for raising the required funds. The length of any extension granted by the City pursuant to this Section 3.7.1 shall be determined by the City, in its sole discretion, based upon the facts and circumstances of MICA's request for such extension. With respect to any determination under this Agreement of "projected total construction costs," the amount used shall be the total calculated by MICA at the time of the determination of the total cost to construct the Center during the period within which construction is expected to occur, with MICA being required to demonstrate to the reasonable satisfaction of the City's Representative that such amount is based on reliable data and information.

3.7.2 Notwithstanding the requirements of Section 3.7.1 above, MICA shall have received contributions, pledges or financing equal to one hundred percent (100%) of the Center's projected total construction costs, as defined in Section 3.7.1, prior to the issuance of the Building Permit for the Center and within seven (7) years after the Effective Date of this Agreement; provided that, the City may grant extensions as required if MICA demonstrates, in the City's sole discretion, that it has engaged in good faith efforts to secure the funds and has reasonable expectations for meeting such goals. The length of any extension granted by the City pursuant to this Section 3.7.2 shall be determined by the City, in its sole discretion, based upon the facts and circumstances of MICA's request for such extension. The final day of any extension period shall not be more than ten (10) years after the Effective Date of this Agreement.

3.7.3 MICA covenants and agrees that construction shall begin within sixty (60) days after the occurrence of the Commencement Date (issuance of the Building Permit); provided that, MICA has received contributions, pledges or financing equal to 100% of the projected total construction costs; provided that, this period shall be extended to the extent of any delay in the commencement of construction of the Center caused by force majeure events or by actions of the City that are not due to a breach of this Agreement by MICA or by any delay caused by permit or land use appeals, including both administrative and judicial appeals, related to the construction of the Center and use of the Premises as contemplated pursuant to this Agreement; and provided further that, the City may grant extensions as required if MICA demonstrates, in the City's sole discretion, that it has engaged in good faith efforts to commence construction of the Center and has reasonable expectations for meeting such goal. The length of any extension granted by the City pursuant to this Section 3.7.3 shall be determined by the City, in its sole discretion, based upon the facts and circumstances of MICA's request for such extension.

3.7.4 MICA covenants and agrees that the Center shall be substantially complete within two (2) years after the Commencement Date; provided that, this period shall be

extended to the extent of any delay in the construction of the Center caused by force majeure events or by actions of the City that are not due to a breach of this Agreement by MICA or by any delay caused by permit or land use appeals, including both administrative and judicial appeals, related to the construction of the Center and use of the Premises as contemplated pursuant to this Agreement; and provided further that, the City may grant extensions as required if MICA demonstrates, in the City's sole discretion that it has engaged in good faith efforts to complete construction of the Center and has reasonable expectations for meeting such goal. The length of any extension granted by the City pursuant to this Section 3.7.4 shall be determined by the City, in its sole discretion, based upon the facts and circumstances of MICA's request for such extension. MICA will provide to the City a copy of the AIA G704 Certificate of Substantial Completion promptly after it is issued by the Architect.

3.7.5 In the event that MICA does not meet any of the timeliness provisions set forth in Sections 3.7.1 through 4, the City may immediately terminate the Term pursuant to Section 25 or, if the Term has not yet begun, terminate this Agreement, with no obligation to provide notice and/or time to cure and with no obligation to reimburse MICA for costs.

3.8 Ownership of the Center. The Center to be constructed on the Premises by MICA shall be and remain the property of MICA during the Term, subject to the terms and conditions of this Agreement.

3.9 Annual Report. MICA shall provide the City with an annual report setting forth an evaluation of all service programs provided, the cost of operating and maintaining the Center, and such other information related to the Center as may be requested by the City. The annual report shall be provided no later than sixty (60) days following the end of each calendar year for the prior year.

3.10 Access to Premises Prior to Commencement Date. To better inform the public and assist MICA in its fundraising efforts, MICA may post a sign on the Premises prior to the Commencement Date that includes a rendering of the proposed Center and other information typical for signs of this nature. The size, appearance and actual location of the sign are subject to approval of the City, which will not be unreasonably withheld or delayed. To enable MICA to evaluate the Premises and plan for construction, the City will permit MICA and its representatives to go onto the Premises prior to the Commencement Date from time to time for the purpose of inspection, planning, special events, surveying and site testing as may be necessary or desirable. MICA will request consent from the City prior to entering the Premises, which consent shall not be unreasonably withheld or delayed. The City may condition its consent on MICA agreeing to repair any damage caused by its entering the Premises. Upon request by the City, any reports produced by MICA or its consultants shall be shared with the City.

4. **RENT.**

MICA shall pay to the City as rental for the Premises an annual rent of ONE DOLLAR (\$1.00) payable on the Commencement Date and on each annual anniversary thereof during the Term and during any extension periods. In addition, the City shall have the right and privilege to use the Center constructed and operated by MICA as more fully set forth below in Section 5.

5. **USE PRIVILEGES.**

5.1. Use of the Center. As additional consideration for the granting of this lease by the City, MICA hereby agrees that the City shall have the right to use portions of the Center as follows:

5.1.1 The City shall have the right to use the spaces within the Center (including all equipment therein) at reasonable preferential rates and dates and times.

5.1.2 The City shall have the right to put on performances each year in the outdoor Center venue that faces the grassy area of Mercerdale Park for the purpose of having a public presentation to persons sitting in Mercerdale Park. The City shall not pay any usage fee to MICA for the use of such venue, except that the City shall pay all costs as described in Section 9 below.

5.1.3 The annual schedule for the spaces and the dates and times of usage shall be agreed upon by the City and MICA prior to January 1st of each year. The City and MICA shall review and approve the annual schedule for the City's use of the Center with both the City and MICA doing whatever they reasonably can do to accommodate the programming needs of each other and to ensure that the City can exercise its rights to use the Center set forth in Section 2.4.

5.1.4 During the City's use of any spaces within the Center as above provided, the City shall provide staff necessary to supervise the City's use of the Center and the equipment therein as described in Section 10 below.

5.2 Public Restrooms. The Center shall be designed so that the public has access to public restrooms at the Center between 6:00 a.m. and 10:00 p.m. on all calendar days. The City will be responsible for the maintenance, repair and security of such restrooms and for the cost of related utilities to the same extent as any public restrooms in the City's park system.

5.3 Mercer Island Farmer's Market. For so long as the Mercer Island Farmer's Market ("MIFM") shall continue to operate on SE 32nd St. adjacent to the Premises, on Sundays or another day of the week subject to MICA's and the City's prior approval, MICA shall provide storage space, electrical power, facilities for the MIFM vendors to wash their hands and equipment, and adequate hot water, the details of which will be agreed upon between MICA and MIFM consistent with Washington State Department of Health regulations. MICA will assume no responsibility for loss or damage to items placed in the storage space, may place restrictions on

items stored there to the extent necessary to address fire safety or similar concerns, may require that MIFM assume responsibility for any damage its causes to the Center incident to its use of the storage space, and shall have the right to inspect the storage space and its contents from time to time upon notice to the MIFM. During periods of use and at the conclusion of every market day, MIFM is responsible for cleaning and maintaining locations at the Center that are being used by MIFM vendors for washing their hands and equipment. MICA shall have the right to require MIFM to enter into a written agreement in which both Parties acknowledge their respective obligations with respect to the above provisions. MICA shall act in a commercially reasonable manner with respect to the provisions that it requires be included in such agreement.

6. INGRESS AND EGRESS.

By way of this Agreement, the City hereby grants to MICA the non-exclusive right of ingress and egress access across the entryways and driveways to the Premises from 77th Ave. SE and SE 32nd St. MICA, its staff, MICA members, licensees, and invitees shall have the non-exclusive right to ingress and egress on these entryways and driveway systems throughout the Term. Nothing contained in this Agreement shall limit the rights of MICA, its staff, MICA members, guests, licensees and invitees to use of Mercerdale Park to the same extent the general public has the right to use Mercerdale Park.

7. IMPROVEMENTS.

During the Term, MICA shall be permitted to make, at its own expense, any alterations, additions or improvements to the Center or Premises consistent with the programs offered by it, subject to the City's usual land use and building permitting processes in effect at the time of application, as described in Section 2. Subject to Section 25, MICA may remove any fixtures if it wishes upon termination of the Term or any extensions to the Term provided that it leaves the Premises and the Center in a structurally sound, safe and clean condition, and further provided that such removal will not cause permanent injury to the structure of the Center or the Premises. Nothing shall be removed or altered that will affect the structural integrity of the Center. At the time of the termination of the Term of this Agreement, the Center will become the property of the City.

8. UTILITIES.

MICA, at its own expense, shall construct and maintain any and all utilities and associated facilities required for construction of the Center upon the Premises. For purposes of this Agreement, the term "utilities" shall include telephone, internet and cable, heat, light, water, gas, power, sewer, and for all other public utilities which shall be used in or charged against the leased Premises during the full term of this Agreement. The City will reimburse MICA for any incremental costs of utilities which are due to the City's use of the theatres, recital hall and kitchen within the Center. Separate metering will be provided for the electrical and water use by the public restrooms, Farmer's Market facilities, Summer Celebration and other City-sponsored outdoor uses of Mercerdale Park. Incremental costs are those costs which would not

have been incurred but for the City's use of such facilities. The reimbursements will be based on reasonable estimates of those incremental costs.

9. MAINTENANCE AND REPAIR COSTS.

9.1 Maintenance and Operating Costs. Except as otherwise set forth herein, MICA shall assume total responsibility for the maintenance and operating costs for the Premises, including the Center. MICA shall at all times keep the Premises in accordance with the laws of the State of Washington and the City and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector, or other proper officer of any pertinent and authorized public authority, at the sole cost and expense of MICA. Notwithstanding the other terms of this Section 9.1, the City shall pay the actual repair expenses for damage to the Premises for any damages caused by the negligence or willful misconduct of the City, its employees, agents or contractors, or if persons participating in City-sponsored activities caused damage to the Premises (including the Center) during those City-sponsored activities. If the source of such damages is not known, MICA shall be responsible for repairing damages to the Center (except the public restrooms), and the City shall be responsible for repairing damages to the remainder of the Premises (excluding the Center) and the public restrooms.

9.2 Maintenance Plans. MICA will formulate annual maintenance plans for the Premises and a capital replacement plan and a reserve account for all equipment and major systems, and copies of all such plans will be provided to the City. All maintenance plans will provide for the Center being maintained in a "first-class" manner, which will be at least the same level as the City maintains the Mercer Island Community and Event Center.

9.3 Janitorial Services. MICA, at its own expense, shall provide janitorial services for the Center and the Premises (except the public restrooms) and shall keep the Center and the Premises in a safe and clean condition, free of accumulations of dirt, rubbish, snow, ice, hazardous environmental contaminants, and unlawful obstructions, and shall maintain the landscaping and the Premises exterior entranceways and walkways in a safe and clean condition consistent with the City's standards of maintenance.

10. OVERSIGHT.

10.1 Monitoring of Activities. When the City is using parts of the Center as provided in Section 5, the City shall be solely responsible for monitoring City-sponsored activities within and around the Center and the Premises so as to avoid the risk of property damage or personal injury. At all other times and except as otherwise provided in this Agreement, as between MICA and the City, MICA shall be solely responsible for monitoring activities within the Center and on the Premises so as to avoid the risk of property damage or personal injury.

10.2 Security. Except as otherwise provided in Section 5, MICA agrees to provide adequate security and safety to protect the Center and occupants against injury during all uses of the Center. For these purposes, "adequate security and safety" shall be the level of security

and safety provided by the City at the Mercer Island Community and Events Center during normal operating times.

10.3 Normal Functioning. MICA agrees to provide operational support and maintenance necessary to ensure that the Center is fully functioning at all times during which it is open to the public.

10.4 Incremental Costs. The City will reimburse MICA for any incremental costs of staff, security, repairs and janitorial services which are due to the City's use of the theatres, recital hall and kitchen within the Center.

11. **SIGNS AND NAMING.**

11.1 Signs. All signs or symbols placed anywhere externally on the Center shall comply with the City's Development Code. If any signs are permitted by the City, such signs shall be removed by MICA at the termination of the Term.

11.2 Naming. MICA shall have sole discretion in the naming of rooms, spaces and areas within the Center and of the Center itself. The name placed on the exterior of the Center must be approved by the City, which approval will not be unreasonably withheld, conditioned or delayed, provided that the City shall not, for any reason, withhold its approval of the names "MICA," "Mercer Island Center for the Arts" or the name or names of any individual donor, sponsor, volunteer or patron selected by MICA, in its sole discretion.

12. **DISPUTE RESOLUTION.**

For purposes of this Section 12, the Designated Representative of the City shall be the City Manager and the Designated Representative of MICA shall be its President. If either party claims that the other party has breached any term of this Agreement, or in the event of disputes or disagreements under this Agreement that cannot be resolved by the Designated Representatives of the Parties, the following procedures shall be followed if and when informal communications, such as telephone conversations, fail to satisfy the claiming party:

12.1 The claiming party's Designated Representative shall provide a written notice to the other party's Designated Representative of the alleged breach, dispute, or disagreement. The notice shall identify the act or omission at issue and the specific term(s) of this Agreement that the complaining party alleges was violated.

12.2 The responding party's Designated Representative shall respond to the notice in writing within fifteen (15) working days. The response shall state that party's position as well as what, if any, corrective action the responding party agrees to take.

12.3 The claiming party shall reply in writing, indicating either satisfaction or dissatisfaction with the response. If satisfied, any corrective action shall be taken within fifteen

(15) days of receipt of the responding party's reply unless otherwise mutually agreed. If dissatisfied, the claiming party shall call an in-person meeting. Otherwise, the matter shall be considered closed. The meeting shall occur within a reasonable period of time (but in no event more than ten (10) days after the claiming party has called for an in-person meeting) and shall be attended by the Designated Representatives of each party, and such others as the Parties individually invite.

12.4 If the claiming party remains dissatisfied with the results of the meeting, it shall then refer the matter to the Mayor of the City and the Chairperson of the MICA Board of Directors, or their designees, for resolution. If the issue is not resolved at this level within thirty (30) days, then either party may require in writing that the matter shall be reviewed in a non-binding, structured mediation process developed on a cooperative basis by the Parties, and the Parties shall consider in good faith any recommendations or settlements arising from such process. The Parties shall use a mediator agreed to by the Parties or failing agreement, Judicial Arbitration and Mediation Service (JAMS). If JAMS is no longer in existence, either party may request the Presiding Judge of the King County Superior Court to appoint a mediator.

12.5 All of the steps preceding shall be a prerequisite to either party suing under this Agreement for breach, specific performance, or any other relief related to this Agreement, except that either party may seek an injunction for irreparable harm.

13. **INDEMNIFICATION/HOLD HARMLESS.**

13.1 MICA's Indemnification/Hold Harmless. MICA shall defend, indemnify, and hold harmless the City, its officers, officials, employees 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 MICA's use of the Premises, construction or use of the Center, or from the conduct MICA's business, or from any activity, work or thing done, permitted, or suffered by MICA in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of MICA and the City, its officers, officials, employees, and volunteers, MICA's liability hereunder shall be only to the extent of MICA's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes MICA's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

13.2 City's Indemnification/Hold Harmless. The City shall defend, indemnify and hold harmless MICA, its officers, officials, employees 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 the City's use of the Premises or the Center or from any activity, work or thing done, permitted, or suffered by City in or about the Premises or the Center, except only such injury or damage as shall have been occasioned by the sole negligence of MICA.

The City waives its immunity under Washington's Industrial Insurance Act, Chapter 51 RCW, as respects MICA, its officers, officials, employees, and agents only, and only to the extent necessary to provide MICA, its officers, officials, employees, and agents with a full and complete indemnity and defense of claims made by the City's employees. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

13.3 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement and the Term.

14. **INSURANCE.**

14.1 MICA's Insurance Obligations. MICA agrees to maintain the following insurance. By requiring such insurance coverage, the City shall not be deemed to, or construed to, have assessed the risks that may be applicable to MICA in this Agreement. MICA shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

14.1.1 Scope and Limits of Insurance. Coverage shall be at least as broad as:

14.1.1.1 Property Insurance: Property insurance shall be written on ISO Special Causes of Loss Form CP 10 30 or a form as least as broad and shall be endorsed to provide coverage from the peril of earthquake. Property insurance shall be written covering the full replacement value of the Center and all other Lessee's property on the Premises with no coinsurance provisions. The City shall be named as loss payee as its interest may appear.

14.1.1.2 Waiver of Subrogation

MICA and the City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Premises or the Center. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

14.1.1.3 Commercial General Liability: Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as additional an insured on MICA's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute

endorsement providing at least as broad coverage. Commercial General Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence, \$5,000,000 general aggregate.

14.1.1.4 Automobile Liability: Limits of not less than \$1,000,000 combined single limit per accident.

14.1.1.5 Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington statutory limits.

14.1.2 Adjustment to Limits. Periodically, but not more than once every ten (10) years, the City may require MICA to increase the General Liability and Automobile Liability limits to levels that are consistent with prevailing practices involving similar rentals.

14.1.3 Deductibles. Any deductibles of the insurance coverage shall not limit or apply to the City and shall be the sole responsibility of MICA.

14.1.4 Other Insurance Provisions. The insurance coverages required by this Agreement are to contain or be endorsed to contain the following provisions where applicable:

14.1.4.1 Liability Coverages:

- To the extent of MICA's negligence, insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the City, its officers, officials, employees, and agents shall not contribute with MICA's insurance or benefit MICA in any way.
- MICA's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

14.1.4.2 All Policies. MICA shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice. Failure on the part of MICA to maintain the insurance as required shall constitute a material breach of lease, upon which the City may, after giving five business days' notice to MICA to correct the breach, terminate the Lease or, at its 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 City on demand.

14.1.4.3 Acceptability of Insurers. Unless otherwise accepted by the City, insurance coverage is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with minimum surpluses the equivalent of Best's surplus size VIII.

14.1.4.4 Verification of Coverage. MICA shall furnish the City with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City and are to be received and approved by the City prior to the commencement of activities associated with this Agreement. The City reserves the right to require complete certified copies of all required policies at any time.

14.1.4.5 Application of Insurance Proceeds. In the case of any insurance policies as described in Section 14.1.1.1, the application of the proceeds from damage or loss to property shall be applied as follows: first, for the purpose of defraying the cost of repairing, restoring, replacing and/or rebuilding the Center and other improvements on the Premises as provided in Section 26.1 herein; and second, if MICA elects termination pursuant to Section 26.2, said funds shall be applied first to restoring the Premises as set forth in Section 26.2. All insurance proceeds shall be deposited into an account agreed to by the City and MICA for disposition as above provided.

14.2 City's Insurance Obligations. The City agrees to maintain commercial general liability insurance or other similar liability coverage acceptable to MICA covering injuries to persons and damage to property covering all of the activities pertaining to this Agreement. The City's membership in Washington Cities Insurance Authority satisfies the City's insurance obligations of this Agreement. By requiring such insurance coverage, MICA shall not be deemed to, or construed to, have assessed the risks that may be applicable to the City in this Agreement. The City shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

15. **HAZARDOUS SUBSTANCES.**

MICA shall not, without first obtaining the City's prior written approval, generate, release, spill, store, deposit, transport, or dispose of (collectively "Release") any hazardous substances, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances, hazardous materials, toxic substances, or any pollutants or substances defined as hazardous or toxic as defined by applicable federal, state, and local laws, regulations, or agencies in any reportable quantities ("Hazardous Substances") in, on or about the Premises, except that MICA may store and use limited quantities of Hazardous Substances (such as paints,

cleaning agents and office supplies) as necessary in the ordinary course of its operations. MICA shall indemnify, hold harmless, and defend the City from any and all claims, liabilities, losses, damages, cleanup costs, response costs, and expenses, including reasonable attorney's fees, arising out of or in any way related to the Release by MICA, or any of its agents, representatives, employees, or authorized users, or the presence of such Hazardous Substances in, on or about the Premises whether or not approved.

16. RIGHT OF INSPECTION.

The City shall have the right to inspect the Premises and the Center during reasonable hours at any time during the Term to ensure compliance with the provisions of this Agreement. When reasonably necessary for such purposes, the City may temporarily alter access to the Premises. Except in an emergency, mutual prior consent is required for any such closures that would require the cancellation of scheduled programming at the Center.

17. LIENS AND INSOLVENCY.

MICA shall keep the Center and the Premises free from encumbrances including mortgages, deeds of trust and any liens arising out of any work performed, materials furnished, or obligations incurred by MICA. In the event MICA becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee, or other liquidating officer is appointed for the business of MICA, then the City may terminate the Term and this Agreement at the City's option following at least thirty (30) days' notice to MICA and an opportunity to remedy such condition within such period.

18. CONDEMNATION.

If at any time during the term of this Agreement, the Premises or a substantial portion thereof shall be taken, appropriated or condemned by reason of eminent domain or threat of eminent domain, this Agreement and the Term shall terminate as of the date of any final judgment entered upon such condemnation or as of the date possession is taken by the condemning authority, whichever is earlier; provided that, in case of a taking of part of the Premises not required for MICA's reasonable use, then this Agreement shall continue in full force and effect. The entire award with reference to the value of land shall belong to the City and MICA hereby assigns to the City any award which may be made in such taking or condemnation of the land. The Parties shall share, on a proportionate basis (as based upon each party's proportionate share of the capital costs incurred with respect to the construction and subsequent improvement of the Center determined in accordance with generally accepted accounting principles consistently applied, taking into account the initial construction and related capital costs as well as the cost of subsequent capital improvements that are depreciable over the remaining life of the Center), the award with reference to the value of the Center provided that, nothing herein shall be deemed to give the City any interest in or to any award made to MICA for the taking of personal property or fixtures belonging to MICA, for the interruption of or damage to MICA's business, or for MICA's moving expenses. The City covenants and agrees not to exercise its power of eminent domain with respect to the Premises.

19. PERSONAL PROPERTY TAXES.

MICA shall pay promptly when due all taxes assessed during the term of this Agreement upon MICA's fixtures, furnishings, equipment, and stock in trade, upon MICA's leasehold interest under this Agreement, or upon any other personal property situated in or upon the leased Premises. In the event any governmental authority, during the term of this Agreement shall levy any tax upon rentals, then MICA shall promptly pay such charge.

20. REAL PROPERTY AND LEASEHOLD EXCISE TAXES.

20.1 Real Property Taxes. In the event that either party is determined to be subject to real property taxes, the taxed party shall be solely responsible for such assessments. In the event that both Parties are determined to be subject to real property taxes, and it being understood

that the King County Assessor will assess the Premises as though all structures and improvements thereto were a part of the realty, the Parties therefore agree that the City shall advise MICA as promptly as possible after receipt of annual general property tax statements, that proportion of the annual taxes which apply to improvements to said Premises, and that proportion which apply to the assessed valuation of the land. Not less than five (5) days prior to April 30 and October 30 of each year of the term of this Agreement and any renewal term, MICA shall deliver to the City a check payable to the King County Treasurer for the portion of the taxes applicable to the improvements, and shall reimburse the City for payment of that proportion of the taxes applicable to the land. The taxes for a partial year shall be pro-rated.

20.2 Leasehold Excise Tax. As the Premises is publicly-owned property, this Agreement may be subject to a leasehold excise tax under Ch. 82.29A RCW. Upon the effective date of the Commencement Certificate, MICA shall complete the necessary paperwork to receive an exemption from the leasehold excise tax. In the event the State of Washington makes any demand upon the City for payment of any leasehold excise tax under RCW 82.29A resulting from MICA's use or occupancy of the Premises, the City shall tender to MICA the right to defend against the levy of any such tax and to appeal any adverse decisions. MICA shall indemnify the City for all sums expended by the City or withheld by the State from the City in connection with such taxation.

21. ASSIGNMENT.

MICA shall not assign or sublet its rights or responsibilities under this Agreement without the written authorization of the City, which authorization will be in the City's sole discretion. Neither assignment nor sublease shall relieve MICA from its liability or obligations under this Agreement. A consent to one assignment or subletting shall not be deemed a consent or waiver to any subsequent assignment or subletting.

22. SEVERABILITY.

If any term of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected but will continue in full force.

23. NON-WAIVER.

Failure of either party to insist upon the strict performance of any term of this Agreement will not constitute a waiver or relinquishment of any party's right to thereafter enforce such term.

24. INTEGRATION.

This writing contains all terms of this Agreement. It replaces all prior negotiations and agreements. Modifications must be in writing and be signed by each party's authorized representative.

25. TERMINATION.

The Term or, if the Term has not yet commenced, then this Agreement, shall be subject to the following termination provisions:

25.1 Termination After Initial Term or After Any Extension. In the event that MICA chooses not to extend the Term pursuant to Section 3.3, the Term shall terminate at the expiration of the unextended Term and no amounts shall be due from either party to the other.

25.2 Termination for Default. The Parties are required to follow the dispute resolution process in Section 12 prior to taking steps under this Section to terminate for default. Only after pursuing the steps in Section 12 shall each party have the right to terminate under this Section 25.2 in the event the other party is in default of any material term or condition of this Agreement by providing thirty (30) days' advance written notice specifying the basis for such determination. If the other party thereafter fails to commence reasonable steps within the thirty day period to correct fully and to remedy the default within ninety (90) days from the date of the notice, then the Term or, if the Term has not yet begun, this Agreement shall be deemed terminated; provided that, if the nature of the default is such that it cannot be remedied within ninety (90) days, then the Term and this Agreement shall not terminate so long as the party in default is proceeding promptly to remedy the default and does so within such additional period as may be agreed by the Parties. This Section 25.2 shall not be invoked by either party for purposes other than default. Such termination shall be subject to the following terms and conditions:

25.2.1 If the City terminates for default by MICA, the City shall take immediate ownership of the Center and shall have no obligation to reimburse MICA in any amount. MICA shall be subject to the following obligations:

25.2.1.1 If the Center was substantially completed pursuant to Section 3 at the time of termination, MICA shall pay the City upon termination an amount equal to three times the Operating Funds (as defined below); provided that, the City shall use good faith efforts to identify, in its sole and absolute discretion, an alternative tenant to operate the Center and, if such tenant assumes operation of the Center at any point during the three years after termination, the City shall reimburse MICA a pro rata amount of what it has previously paid the City.

25.2.1.2 If the Center was not substantially completed pursuant to Section 3 at the time of termination, and if the City elects to demolish what has theretofore been constructed, MICA shall be solely responsible for immediate repayment to the City of any costs reasonably incurred by the City to restore the Premises to the condition existing immediately prior to the Commencement Date, including but not limited to demolition and removal costs for the Center and related improvements.

25.3 Relinquishing Possession; Disposition of Fixtures and Removal of Personal Property and Fixtures. Upon termination, MICA shall surrender the Premises and the Center to the City in a structurally sound, safe and clean condition and remove MICA's personal property and convey title to the Center to the City. MICA shall remove all personal property within forty-five (45) days of the expiration of the Term or it shall be considered surplus and become the property of the City. The City may dispose of such surplus property by any reasonable means and charge MICA for the City's disposal costs. During such 45-day period, MICA may also remove any improvements, additions, or fixtures erected in or attached to the Center; provided that, MICA is not then in default and the removal will not cause permanent injury to the structure of the Center or the Premises.

25.4 Operating Funds. For purposes of this Section 25, the phrase "Operating Funds" shall mean the actual average annual costs incurred by MICA in operating the Center during the 3-year period prior to termination or, if there have not yet been three full years of operation, then during the actual period of operation.

26. **DESTRUCTION.**

26.1 Total or Partial Destruction. In the event of total or partial destruction of the Center, as soon as reasonably possible following receipt of insurance proceeds and any necessary permits, MICA shall commence repair, reconstruction and restoration of the Center and undertake the same diligently to completion. MICA's failure to comply with this Section 26(a) shall be a basis for default unless MICA elects to terminate using the process set forth in Section 26(b) below.

26.2 Election to Terminate. In the event the cost of repairing damage to the Center exceeds 50% of the value the Center would have after such restoration, MICA may, at its option, elect not to restore the Center pursuant to Section 26.1, subject to MICA providing the City with written notice of such election within four (4) weeks of the receipt of the insurance proceeds and subject to MICA's payment to the City an amount equal to the reasonable costs related to restoring the Premises to the condition existing immediately prior to the Commencement Date, in which case MICA shall surrender ownership of the Center to the City. Following MICA's election and payment pursuant to this Section 26.2, this Agreement shall terminate.

27. **NOTICES.**

All notices and communications between the Parties will be between the persons identified immediately below or such successor persons as may be identified in writing by either party. Each of the persons designated below and any successors will have authority to bind their respective organizations or will obtain any necessary authority on an ad hoc basis and in a timely manner. Each such notice or other communication which may be or is required to be given under this Agreement shall be in writing and shall be deemed to have been properly given when delivered personally or by email during normal business hours to the party to whom such

communication is directed, or three (3) days after being sent by regular mail, to the Parties' Representatives at the following addresses:

If to MICA:

Mercer Island Center for the Arts
P.O. Box 1702
Mercer Island, WA 98040
Attn: _____
Email: _____

If to the City:

City of Mercer Island
9611 SE 36th St.
Mercer Island, WA 98040
Attn: City Manager
Email: _____

Either party may change its address for notices from time to time by notice to the other party given as above provided.

28. JURISDICTION, VENUE, AND GOVERNING LAW.

The Parties hereto, their successors and assigns, hereby consent to the jurisdiction and venue of the King County Superior Court, State of Washington, for the determination of any dispute that may arise pursuant to the terms of this Agreement and other agreements contained herein to the extent not resolved pursuant to Section 12 above. All the rights and remedies of the respective Parties shall be governed by the provisions of this instrument and by the laws of the State of Washington as such laws relate to the respective rights and duties of City and MICA.

29. SECTION HEADINGS.

The section headings used in the Agreement are for the convenience of the Parties. In the event of a conflict between a section heading and the text of a particular section, the written text shall prevail.

30. SUCCESSORS AND ASSIGNS.

Subject to the provisions hereof pertaining to assignment and subletting in Section 21, the covenants and agreements of this Agreement shall be binding upon the heirs, legal representatives, successors, and assigns of any or all of the Parties hereto.

31. AMENDMENTS.

MICA and the City anticipate that terms of this Agreement may need to be modified in the future. MICA’s President, after approval of the MICA Board of Directors, and the City Manager, after approval of the City Council, are hereby authorized to approve mutually agreed amendments to this Agreement and to supplement this Agreement where necessary to improve the administration of this Agreement and the collaboration between the Parties. All amendments must be in writing signed by the President of MICA and the City Manager.

32. AUTHORITY.

The City has the authority to enter into this Agreement pursuant to RCW 35A.11.010 and the City Council approved this Agreement on _____, 2016, at a regular Council meeting for which public notice was properly advertised; and

MICA's Board of Directors approved this Agreement on _____, 2016.

33. COUNTERPARTS.

The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by both Parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF, both the City and MICA have caused this Agreement to be executed by authorized officers effective on the date first written above.

CITY OF MERCER ISLAND, a Washington
municipal corporation

MERCER ISLAND CENTER FOR THE ARTS, a
Washington nonprofit corporation

By _____
Its City Manager

By _____
Its President

Approved as to form:

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Steve Lancaster is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath and stated that he was authorized to execute the instrument and acknowledged it as the Interim City Manager of the City of Mercer Island, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

(notary signature)
Printed Name: _____
NOTARY PUBLIC in and for the State of Washington
My commission expires: _____.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath and stated that s/he was authorized to execute the instrument and acknowledged it as the President of Mercer Island Center for the Arts, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

(notary signature)
Printed Name: _____
NOTARY PUBLIC in and for the State of Washington
My commission expires: _____.

EXHIBIT A

Termination Agreement

This Termination Agreement ("Termination Agreement") dated _____ is effective on the date that it is fully executed by the parties. The parties to this Termination Agreement are the City of Mercer Island, a Washington Municipal Corporation ("City"), and Mercer Island Center for the Arts, a Washington not-for-profit Corporation ("MICA") (collectively, the "Parties").

- A. On or about February 22, 2016, the Parties entered into a Memorandum of Understanding Regarding a Center for the Arts ("MOU") establishing the process to be followed by the Parties to complete environmental review for siting the construction of MICA's center for the performing and visual arts and for arts education programs (the "Center") on certain City owned property (the "Premises").
- B. Upon satisfactory completion of various conditions precedent, including environmental review, the MOU contemplated that the Parties would enter into a lease agreement.
- C. Since signing the MOU, the Parties have stopped actively pursuing a lease agreement to site the Center on the Premises.
- D. Instead, the Parties are actively negotiating with a private developer to construct the Center as an integral part of a public-private mix-use development project in the Town Center area of Mercer Island.
- E. As a result of this new opportunity, circumstances have changed, and the MOU no longer serves any purpose for the Parties.

NOW, THEREFORE, the Parties agree to the following terms and conditions:

1. Termination of MOU. The MOU referenced above in Section A, and an executed copy of which, without exhibits, is attached hereto as Exhibit A to this Termination Agreement, is hereby terminated without any further obligation by the Parties.
2. Waiver of Claims. The Parties hereby forever waive all claims against each other related to, or arising from, the MOU.

**MERCER ISLAND CENTER
FOR THE ARTS**

CITY OF MERCER ISLAND

By: _____

By: _____

Jessi Bon, Interim City Manager

Name: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

Bio Park, Interim City Attorney

DRAFT



BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND, WA

AB 5580
June 18, 2019
Regular Business

CRITICAL AREAS CODE, SHORELINE
MASTER PROGRAM, SEPA, AND
ANCILLARY AMENDMENTS (3RD READING
AND ADOPTION)

Action:
Adopt Ordinances Nos. 19C-05, 19C-
06, and 19C-07.

- Discussion Only
Action Needed:
Motion
Ordinance
Resolution

Table with 2 columns: Category and Description. Rows include DEPARTMENT OF, COUNCIL LIAISON, EXHIBITS, 2019-2020 CITY COUNCIL PRIORITY, and APPROVED BY CITY MANAGER.

Table with 3 columns: Category, Amount, and Unit. Rows include AMOUNT OF EXPENDITURE, AMOUNT BUDGETED, and APPROPRIATION REQUIRED.

SUMMARY

At its June 4, 2019 meeting, the City Council conducted the second reading of draft Ordinances Nos. 19C-05 (adopting new critical areas code standards), 19C-06 (amending the City's Shoreline Master Program) and 19C-07 (amending the City's SEPA rules). The City Council also reviewed potential changes to dock width standards developed by staff in response to previous Council direction to decouple standards pertaining to decking width and height from repair standards for dock decking (see AB 5577).

Staff briefed the City Council on the implications of making substantive changes to the City's Shoreline Master Program (SMP), including: 1) the need for additional technical analysis in the form of a Cumulative Impact Analysis (CIA) addendum to determine the impact of the proposed changes; and 2) an increased likelihood of mitigation measures being required by the Dept. of Ecology to offset the impact of the proposed changes.

The City Council directed staff to make additional changes to the dock repair standards, which are reflected in the yellow-highlighted on pages 20-21 of Attachment A to Exhibit 2. All changes from the first reading draft of the proposed ordinances are also identified in yellow-highlighted text.

The City's consultant, ESA has prepared the required CIA addendum (Exhibit 4). The CIA addendum recommends that "For exterior surface (including decking) repair and replacement only, eliminate the "50% of exterior surface" threshold altogether or reduce the threshold to 20%. Implementing this change would provide additional consistency with WDFW guidance, and is anticipated to increase the frequency with

which existing piers/docks would be re-decked with light transmittable grating in the years ahead. This approach may also reduce challenges associated with application of this standard.” The CIA addendum also identifies several mitigation options that could be incorporated, including the removal of dock skirting and requiring additional vegetation enhancement in the near shore area. As the mitigation options appear to be unnecessary, and the City Council direction was to minimize barriers to dock repair, the mitigation language was not incorporated into the draft regulations.

RECOMMENDATION

Planning Commission and Senior Planner

MOVE TO: Adopt Ordinance Nos. 19C-05, 19C-06, and 19-07 regarding critical area, shoreline and SEPA regulations in Title 19 of the Mercer Island City Code.

**CITY OF MERCER ISLAND
ORDINANCE NO. 19C-05**

AN ORDINANCE OF THE CITY OF MERCER ISLAND AMENDING CRITICAL AREAS REGULATIONS IN TITLE 19 OF THE MERCER ISLAND CITY CODE; PERMITTING CORRECTION OF SCRIVENER'S ERRORS DURING CODIFICATION; AUTHORIZING ISSUANCE RULES TO ADMINISTER THE AMENDED CODE; PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Mercer Island City Code (MICC) establishes development regulations that are intended to result in the implementation of the Mercer Island Comprehensive Plan pursuant to RCW 36.70A.040; and,

WHEREAS, the Mercer Island City Council directed the Planning Commission to review the Best Available Science related to the protection of environmentally critical areas, and to further review the Shoreline Master Program, and to provide a recommendation to the City Council; and,

WHEREAS, the Mercer Island Planning Commission reviewed the policies and regulations related to the protection of environmentally critical areas and the Shoreline Master Program for approximately 18 months and over the course of 16 public meetings; and,

WHEREAS, in addition to informal public outreach, consisting of articles on social media and the establishment of a dedicated webpage on "Let's Talk", a formal notice of public hearing was provided in accordance with MICC 19.15.100; and,

WHEREAS, the Mercer Island Planning Commission held a public hearing on March 6, 2019 and considered public comment received prior to the close of the public hearing; and,

WHEREAS, the Mercer Island Planning Commission unanimously recommended adoption of the proposed amendments to the critical area regulations, Shoreline Master Program, SEPA standards, and related code amendments; and,

WHEREAS, the Mercer Island Comprehensive Plan Land Use Element establishes numerous goals and policies that are implemented through the adoption of the revised critical areas code; and,

WHEREAS, a SEPA Determination of Non-Significance was issued by the City on February 4, 2019; and,

WHEREAS, the Washington Department of Commerce granted review of the proposed amendments to the development regulations on February 21, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1: **Title 19 MICC Amended.** Title 19 MICC is hereby amended as follows: MICC 19.07.010 through and including MICC 19.07.090 are repealed, and a new chapter 19.07 MICC is adopted as set forth in Attachment "A" to this Ordinance.

Section 2: **Additional Amendments to Title 19 MICC.** Additional amendments to title 19 MICC are hereby adopted as set forth in Attachment “B” to this Ordinance.

Section 3: **Codification and Effective Date of the Regulations.** The City Council authorizes the Community Planning and Development Director and the City Clerk to correct errors in Attachments A and B, codify the regulatory provisions of the amendments into title 19 MICC, and publish the amended code. Notwithstanding the effective date of this ordinance set forth in Section 6, the effective date of the regulatory provisions in Sections 1 and 2 shall be on July 29, 2019.

Section 4: **Interpretation.** The City Council authorizes the Community Planning and Development Director to adopt administrative rules and administer the amended code as necessary to implement the legislative intent of the City Council.

Section 5: **Severability.** If any section, sentence, clause or phrase of this Ordinance or any city code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

Section 6: **Publication and Effective Date.** A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take effect and be in full force five days after the date of publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on June 18, 2019 and signed in authentication of its passage.

CITY OF MERCER ISLAND

Debbie Bertlin, Mayor

APPROVED AS TO FORM:

ATTEST:

Bio F. Park, Interim City Attorney

Deborah A. Estrada, City Clerk

Date of Publication: _____

1 Chapter 19.07

2 ENVIRONMENT

3 Sections:

4 19.07.010 Purpose.

5 19.07.020 Applicability

6 19.07.030 Relationship to Other Regulations

7 19.07.040 Critical Areas Rules

8 19.07.050 Fees

9 19.07.060 Critical Area Maps and Inventories

10 19.07.070 Disclosure and Notice on Title

11 19.07.080 General Provisions

12 19.07.090 Critical Area Reviews

13 19.07.100 Mitigation Sequencing

14 19.07.110 Critical Area Studies

15 19.07.120 Exemptions

16 19.07.130 Modifications

17 19.07.140 Reasonable Use Exception

18 19.07.150 Public Agency Exception

19 19.07.160 Geologically Hazardous Areas

20 19.07.170 Fish and Wildlife Habitat Conservation Areas

21 19.07.180 Watercourses

22 19.07.190 Wetlands

23 **19.07.010 Purpose**

24 These regulations are adopted for the following purposes:

- 25 A. To implement the goals and policies for the Growth Management Act chapter 36.70A RCW;
- 26 B. To maintain the functions and values of critical areas and enhance the quality of habitat to support
27 the sustenance of native plants and animals;
- 28 C. To balance property owner interests with the public interest;
- 29 D. To promote biodiversity within critical areas and buffers by encouraging planting with mostly native
30 vegetation;
- 31 E. To establish review criteria for land use reviews that maintain and improve the ecological health of
32 wetlands, watercourses and Lake Washington;
- 33 F. To establish standards for new development that avoid increasing the risk of harm to people,
34 property, and public infrastructure from natural hazards;
- 35 G. To protect the functions and value of fish and wildlife habitat conservation areas, including
36 wetlands, watercourses and habitat for priority species and species of local importance, through the
37 use of buffers;
- 38 H. To increase the safety of development within and adjacent to geologically hazardous areas through
39 the use of buffers;
- 40 I. To require mitigation measures when unavoidable impacts to critical areas are proposed;
- 41 J. To establish tools to ensure that protection and mitigation measures are applied and maintain
42 ecological value and function consistent with the provisions of this chapter;

- 1 K. To avoid impact to the critical areas where possible, and if avoidance is not reasonably possible,
2 minimize impacts to critical areas and buffers to the greatest extent feasible, and mitigate any
3 remaining impacts;
- 4 L. To encourage the restoration of existing compromised critical areas; and
- 5 M. To minimize negative impacts from the built environment on the functions and values of critical
6 areas.

7 **19.07.020 Applicability**

- 8 A. Except as specifically exempted by MICC 19.07.120 - Exemptions, these regulations apply to land
9 uses, development activity, and all structures and facilities within the City of Mercer Island that
10 contain any of the following critical areas and/or their buffers, as defined in 19.16 MICC:
 - 11 1. Geologically Hazardous Areas;
 - 12 2. Fish and Wildlife Habitat Conservation Areas;
 - 13 3. Watercourses; and
 - 14 4. Wetlands.
- 15 B. The city shall not approve any development proposal or otherwise issue any authorization to alter
16 the condition of any land, water or vegetation or to construct or alter any structure or improvement
17 without first assuring compliance with the requirements of this chapter or determining that this
18 chapter is not applicable to the development.
- 19 C. Approval of a development proposal pursuant to the provisions of this chapter does not discharge
20 the applicant of the obligation to comply with the provisions of this chapter.

21 **19.07.030 Relationship to other regulations**

- 22 A. Interpreting Multiple Regulations. If more than one regulation applies to a given property, then the
23 regulation that provides the greatest protection to critical areas shall apply.
- 24 B. Other Jurisdictions. Nothing in these regulations eliminates or otherwise affects the responsibility of
25 an applicant or property owner to comply with all other applicable local, state, and federal
26 regulations and required permits.
- 27 C. SEPA Compliance. Nothing in these regulations or the decisions made pursuant to these regulations
28 affects the authority of the city to review, condition, and deny projects under the State
29 Environmental Policy Act, chapter 43.21C RCW.

30 **19.07.040 Critical Areas Rules**

31 The city is authorized to adopt administrative rules and regulations that are consistent with this chapter
32 and necessary and appropriate for its implementation. The city is also authorized to prepare and require
33 the use of forms to facilitate the chapter's administration.

34 **19.07.050 Fees**

- 35 A. Unless otherwise indicated in this title, the applicant shall be responsible for the initiation,
36 preparation, submission, and expense of all required reports, assessments, studies, plans,
37 reconnaissances, or other work prepared in support of or necessary to review the application.
- 38 B. The applicant shall be responsible for all applicable fees as established in the city's fee schedule,
39 consultant review fees, and peer review fees.

40 **19.07.060 Critical Area Maps and Inventories**

41 Approximate locations of critical areas in the City of Mercer Island are depicted on citywide maps
42 displayed in the city's GIS database, as amended. Field verification and, if the city deems appropriate,

1 evaluation and mapping by a qualified professional of the location of critical areas will be required to
2 determine the location and type of critical area on a given site.

3 **19.07.070 Disclosure and notice on title**

- 4 A. The applicant shall disclose to the city the presence of critical areas on the development proposal
5 site and any mapped or identifiable critical areas within the distance equal to the largest potential
6 required buffer applicable to the development proposal on the development proposal site.
- 7 B. The owner of any property containing critical areas and/or buffers on which a development proposal
8 is submitted, except a public right-of-way or the site of a permanent public facility, shall file a notice
9 approved by the city with the records and elections division of King County. The notice shall inform
10 the public of the presence of critical areas, buffers and/or mitigation sites on the property, of the
11 application of the city's critical areas code to the property and that limitations on actions in or
12 affecting such critical areas and/or buffers may exist. The notice shall run with the land in
13 perpetuity.
- 14 C. The applicant shall submit proof to the city that the notice has been recorded prior to approval of a
15 development proposal for the property or, in the case of subdivisions, short subdivisions, and
16 binding site plans, at or before recording of the final subdivision, short subdivision, or binding site
17 plan.
- 18 D. Notices on title may be removed or amended, whichever is applicable, at a property owner's
19 request, after approval by the city if it is documented that the information contained in an existing
20 notice is no longer accurate, because a critical area has changed, for example in its type or location,
21 or if the notice is proposed to be replaced with a notice containing updated information.

22 **19.07.080 General provisions**

- 23 A. Hold Harmless/Indemnification Agreement and Covenant Not to Sue, Performance Guarantees,
24 Performance Bonds, Insurance. An applicant for a permit within a critical area shall comply with the
25 requirements of MICC 19.01.060.
- 26 B. Timing. All alterations or mitigation to critical areas shall be completed prior to the final inspection
27 and occupancy of a project.
- 28 C. Maintenance and Monitoring.
- 29 1. Maintenance and monitoring shall be required for at least five years from the date of project
30 completion if the code official determines such condition is necessary to ensure mitigation
31 success and critical area protection.
- 32 2. A bond or assignment of funds pursuant to MICC 19.01.060(C) may be required to guarantee
33 that approved mitigation plans will be undertaken and completed to the city's satisfaction.
- 34 3. When monitoring is required, site visits and reporting shall be required two times per year for
35 each of the first two years and once every 12 months for the subsequent years of the
36 monitoring period.
- 37 4. Where monitoring reveals a significant difference from predicted impacts or a failure of
38 protection measures, the applicant shall be responsible for appropriate corrective action, which
39 may be subject to further monitoring.
- 40 D. Compliance with Mitigation Requirements. In cases where mitigation has been completed, but no
41 monitoring reports have been submitted to the city, the applicant shall submit as-built drawings and

1 yearly monitoring reports to the city until at least two consecutive annual reports document that all
2 performance standards from the approved mitigation plan have been met.

- 3 E. Seasonal Limitations. Land clearing, grading, filling, and foundation work may be limited to only
4 certain times of year, pursuant to MICC 19.07.160(F)(2).
- 5 F. Suspension of Work. If the alteration does not does not comply with the permit or applicable codes,
6 including controls for water quality, erosion and sedimentation, the city may suspend further work
7 on the site until such standards are met. Compliance with all requirements of this chapter is
8 required pursuant to MICC 19.15.210.
- 9 G. A critical area study, as described in 19.07.110, completed over five years prior to application
10 submittal date shall be field verified by a qualified professional to determine whether the study
11 accurately provides information required by the code, and if not, the study shall be updated or
12 completed according to the current best available science.

13 **19.07.090 Critical Area Reviews**

14 This subsection describes the purpose and procedures by which the city will review and authorize
15 development and verify consistency with this chapter.

16 A. Critical Area Review 1

- 17 1. The purpose of a Critical Area Review 1 is to review:
 - 18 a. Activities listed as Modifications in MICC 19.07.130 - Modifications;
 - 19 b. Verification of the presence or absence of a critical area; or
 - 20 c. Verification of the delineation and/or type of wetland or watercourse.
- 21 2. Review timing and sequence
 - 22 a. If a building permit is required for the proposed scope of work associated with the Critical
23 Area Review 1, then the substance of the review shall take place concurrently with the
24 building permit review, and no separate land use review application is required.
 - 25 b. If no building permit is required for the proposed scope of work associated with the Critical
26 Area Review 1, then the review shall take place according to the procedures required for a
27 Type 1 land use review.
- 28 3. Requirements for a complete application
 - 29 a. Completed Development Application Coversheet
 - 30 b. Project narrative, describing the proposed scope of work.
 - 31 c. Scaled site plan showing the proposed work
 - 32 d. Any additional information required by the city to confirm compliance with this Title.

33 B. Critical Area Review 2

- 34 1. The purpose of a Critical Area Review 2 is to review critical area studies and mitigation plans in
35 support of proposed buffer averaging and reduction of wetland and watercourse buffers.
- 36 2. Review timing and sequence
 - 37 a. When development and/or activity within a wetland, watercourse, Fish and Wildlife Habitat
38 Conservation Area or buffer associated with these critical area types is proposed, a Critical
39 Area Review 2 is required to be reviewed and approved prior to construction authorization.
 - 40 b. When development and/or activity is proposed on a site containing only geologically
41 hazardous areas, an applicant has the option of either:

- 1 (1) Applying for a Critical Area Review 2 in advance of construction permits, using the
- 2 procedures required for a Type 3 land use review; or
- 3 (2) Requesting consolidation of the review of geologically hazardous areas together with
- 4 construction permit review.
- 5 c. When development and/or activity is proposed on a site containing geologically hazardous
- 6 areas and one or more of the critical area types listed in subsection (B)(2)(a) or the
- 7 associated buffer of one of those critical areas, a Critical Area Review 2 reviewing all critical
- 8 areas is required to be reviewed and approved prior to construction authorization, using the
- 9 procedures required for a Type 3 land use review.
- 10 3. Requirements for a complete application include:
- 11 a. A completed Development Application Coversheet;
- 12 b. A critical area study, meeting the requirements of MICC 19.07.110 - Critical Area Studies;
- 13 and
- 14 c. Additional information required by the city to confirm compliance with this title.
- 15 C. Reasonable Use Exceptions shall be reviewed using the criteria in MICC 19.07.140, using the
- 16 procedures required for a Type 4 land use review.
- 17 D. Public Agency Exceptions shall be reviewed using the criteria in MICC 19.07.150, using the
- 18 procedures required for a Type 3 land use review.

19 **19.07.100 Mitigation sequencing**

20 Except as otherwise provided in this chapter, an applicant for a development proposal or activity shall
21 implement the following sequential measures, listed below in order of preference, to avoid, minimize,
22 and mitigate impacts to environmentally critical areas and associated buffers. Applicants shall document
23 how each measure has been addressed before considering and incorporating the next measure in the
24 sequence:

- 25 A. Avoiding the impact altogether by not taking a certain action or parts of an action. The applicant
- 26 shall consider reasonable, affirmative steps and make best efforts to avoid critical area impacts.
- 27 However, avoidance shall not be construed to mean mandatory withdrawal or denial of the
- 28 development proposal or activity if the proposal or activity is an allowed, permitted, or conditional
- 29 use in this title. In determining the extent to which the proposal should be redesigned to avoid the
- 30 impact, the code official may consider the purpose, effectiveness, engineering feasibility,
- 31 commercial availability of technology, best management practices, safety and cost of the proposal
- 32 and identified changes to the proposal. Development proposals should seek to avoid, minimize and
- 33 mitigate overall impacts based on the functions and values of all of the relevant critical areas and
- 34 based on the recommendations of a critical area study. If impacts cannot be avoided through
- 35 redesign, use of a setback deviation pursuant to MICC 19.06.110(C), or because of site conditions or
- 36 project requirements, the applicant shall then proceed with the sequence of steps in subsections (B)
- 37 through (E) of this section;
- 38 B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, using
- 39 a setback deviation pursuant to MICC 19.06.110(C), using appropriate technology, or by taking
- 40 affirmative steps to avoid or reduce impacts;
- 41 C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

- 1 D. Reducing or eliminating the impact over time by preservation and maintenance operations during
- 2 the life of the action;
- 3 E. Compensating for the impact by replacing, enhancing, or providing substitute resources or
- 4 environments; and/or
- 5 F. Monitoring the impact and taking appropriate corrective measures to maintain the integrity of
- 6 compensating measures.

7 **19.07.110 Critical Area Study**

- 8 A. A critical area study shall be required when a development proposal will result in an alteration to
- 9 one or more critical areas or critical area buffers or when required to determine the potential
- 10 impact to a critical area.
- 11 B. The critical area study shall be in the form of a written report supported by graphic information
- 12 prepared by a qualified professional using guidance based on the best available science consistent
- 13 with the standards in chapter 365-195 WAC and shall contain the following items, as applicable to
- 14 adequately evaluate the proposal, proposed alterations, and mitigation:
 - 15 1. Disclosure of the presence of critical areas, including a delineation and type or category of
 - 16 critical area, on the development proposal site and any mapped or identifiable critical areas on-
 - 17 or off-site within the distance equal to the largest potential required buffer applicable to the
 - 18 development proposal area on the applicant's property;
 - 19 2. A topographic and boundary survey;
 - 20 3. A statement specifying the accuracy of the report and all assumptions made and relied upon;
 - 21 4. A description of the methodologies used to conduct the critical area study, including references;
 - 22 5. A scale map of the development proposal site;
 - 23 6. Photographic records of the site before the proposed alteration occurs;
 - 24 7. An assessment of the probable effects to critical areas and associated buffers, including impacts
 - 25 caused by the development proposal and associated alterations to the subject property and
 - 26 impacts to other properties and any critical areas or buffers located on them resulting from the
 - 27 development of the site and the proposed development;
 - 28 8. A description of mitigation sequencing implementation described in MICC 19.07.100 including
 - 29 steps taken to avoid and minimize critical areas impacts to the greatest extent feasible;
 - 30 9. Detailed studies, as required by this chapter, for individual critical area types in order to ensure
 - 31 critical area protection;
 - 32 10. Assessment of potential impacts that may occur on adjacent site, such as sedimentation or
 - 33 erosion, where applicable; and
 - 34 11. A post-design memorandum prepared by a qualified professional confirming that the proposed
 - 35 improvements comply with the design recommendations.
- 36 C. The critical area study requirement may be waived or modified if the applicant demonstrates that
- 37 the development proposal will not have an impact on the critical area or its buffer in a manner
- 38 contrary to the purposes and requirements of this chapter.

39 **19.07.120 Exemptions**

- 40 A. Activities listed as exempt in this section do not require review for compliance with this chapter,
- 41 provided they are otherwise consistent with the provisions of other city, state, and federal laws and
- 42 requirements.

- 1 B. An exemption does not give permission to degrade a critical area or ignore risk from natural
2 hazards.
- 3 C. All temporary and permanent impacts to critical areas and buffers shall be mitigated.
- 4 D. The following activities are exempt from review and compliance with this chapter, provided, all
5 activities shall use reasonable methods to avoid, and if avoidance is not possible, minimize impacts
6 to critical areas and buffers to the greatest extent feasible consistent with MICC 19.07.100 –
7 Mitigation Sequencing:
- 8 1. Minor expansion of existing right of way improvements, including public streets, bike lanes,
9 shoulders, trails, sidewalks, and open space, following consultation with the code official;
- 10 2. Minor expansion of public utility structures and conveyance systems and their associated
11 facilities including service lines, pipes, mains, poles, equipment and appurtenances, both above
12 and below ground, following consultation with the code official; and
- 13 3. Site Investigative Work and Studies. Site investigative work and studies necessary for
14 development proposals, including geotechnical tests, water quality studies, wildlife studies,
15 surveys, soil logs, and critical area investigations within areas accessed by foot; provided the
16 following criteria are met:
- 17 a. Impacts to critical areas and buffers shall be minimized; and
- 18 b. Disturbed areas shall be restored with native vegetation as soon as the investigative work is
19 complete.
- 20 4. Watercourse restoration and pipe extensions installed by a public agency, provided the steps in
21 19.07.100 – Mitigation Sequencing are addressed.
- 22 E. The following activities are exempt from city review and approval but must comply with the
23 standards of this chapter:
- 24 1. Repair and maintenance of existing right of way improvements. Repair, maintenance,
25 reconstruction and replacement of existing right of way improvements, including public streets,
26 bike lanes, shoulders, trails, sidewalks, and open space;
- 27 2. Repair and maintenance of existing utility facilities. Repair, maintenance, reconstruction and
28 replacement of public utility structures and conveyance systems and their associated facilities,
29 including but not limited to service lines, pipes, mains, poles, equipment and appurtenances,
30 both above and below ground.
- 31 3. Noxious weed removal. Removal of noxious weeds provided:
- 32 a. All disturbed soils are stabilized and revegetated with appropriate native vegetation; and
- 33 b. The area from which noxious weeds are removed is limited to 1,000 square feet.
- 34 4. Maintenance of Existing Landscaping. Landscape maintenance of legally-established lawns and
35 gardens including mowing, pruning, weeding, and planting; provided, that such activities are
36 consistent with the following provisions:
- 37 a. Landscaping is not expanded any further into critical areas or buffers;
- 38 b. Erosion control measures are implemented when soils have been disturbed;
- 39 c. Groundcover voids that result from the removal of noxious weeds shall be revegetated with
40 regional native plants;
- 41 d. Removal of noxious weeds and other restoration work shall be undertaken with hand labor,
42 including handheld mechanical tools, unless the King County Noxious Weed Control Board

- 1 Best Management Practice specifically prescribe the use of riding mower, light mechanical
2 cultivating equipment, or herbicide or biological control methods;
- 3 e. Herbicide use is in accordance with federal and state law; and
 - 4 f. Landscaping does not include the removal of large or exceptional trees.
- 5 5. Survey and Boundary Markers. Placement or modification of survey and boundary markers.
- 6 6. Temporary alterations in response to emergencies that threaten the public health, safety, and
7 welfare or that pose an imminent risk of damage to private property, provided the following
8 criteria are met:
- 9 a. The person undertaking such an action shall notify the code official in writing within one
10 business day following commencement of the emergency activity;
 - 11 b. Within 15 calendar days of the commencement of the emergency activity, the person
12 undertaking such an action shall submit a complete application for all necessary approvals
13 to authorize the alterations made and proposed in response to the emergency. The code
14 official may allow additional time up to 180 calendar days for submittal of a complete
15 application if the applicant requests an extension for a specific period of time. The code
16 official may grant additional time extensions beyond 180 calendar days when multiple
17 property owners or litigation is involved and when requested by the applicant;
 - 18 c. The person undertaking such an action shall mitigate all impacts caused by the alteration
19 and associated restoration activities, including intentional or unintentional alterations to all
20 critical areas and buffers; and
 - 21 d. A qualified professional shall supervise all alterations made to critical areas.
- 22 7. Passive Outdoor Activities. When it can be demonstrated that there will be no undue adverse
23 effect, the following activities may be allowed within critical areas and their buffers: educational
24 activities, scientific research, and outdoor recreational activities, including but not limited to
25 interpretive field trips, bird watching, and beach access including water recreation-related
26 activities. This exemption does not authorize any construction.

27 **19.07.130 Modifications**

28 Activities of the following types may be authorized with approval of an application for a Critical Area
29 Review 1. The activities in this section are exempt from the development standards in subsequent
30 sections within this chapter, provided that additional measures to protect life and property or to protect
31 environmental quality may be required.

- 32 A. Addition to or reconstruction of an existing legally-established structure or building within a critical
33 area and/or buffer constructed on or before January 1, 2005 provided the following criteria are met:
- 34 1. The seasonal limitations on land clearing, grading, filling, and foundation work described in
35 MICC 19.07.160(F)(2) shall apply.
 - 36 2. Additions shall be allowed if all of the following criteria are met:
 - 37 a. The structure is enlarged not more than a cumulative total of 200 square feet larger than its
38 footprint as of January 1, 2005;
 - 39 b. If the existing, legally-established structure is located over or within a wetland or
40 watercourse, no further expansion within the wetland or watercourse is allowed;
 - 41 c. If the existing legally established structure is located within a wetland or watercourse buffer,
42 the addition may be no closer to the wetland or watercourse than a distance equal to 75%

- 1 of the applicable standard buffer and must also be no closer to the watercourse or wetland
2 than the existing structure;
- 3 d. A critical area study approved by the city demonstrates that impacts have been avoided or
4 minimized and mitigated consistent with MICC 19.07.100 - Mitigation Sequencing;
- 5 e. If the modification or addition is proposed within a geologically hazardous area or
6 associated buffer, a qualified professional provides a statement of risk consistent with MICC
7 19.07.160(B)(3);
- 8 3. Reconstruction of legally established non-conforming structures shall meet the standards in
9 MICC 19.01.050. The code official may require a critical area study and mitigation plan
10 addressing temporary impacts to critical areas and buffers.
- 11 4. Demolition. Removal of structures in watercourse and wetland buffers and geologically
12 hazardous areas, provided:
- 13 a. Site disturbance is limited to the existing access and building footprint;
14 b. There is no site disturbance within or to wetlands or watercourses;
15 c. All soils are stabilized and the area is revegetated with appropriate native vegetation; and
16 d. Necessary building permits are obtained.
- 17 B. Restoration and enhancement activities involving site disturbance over 1,000 sq ft, provided the
18 following criteria are met:
- 19 1. Erosion control measures are implemented when soils have been disturbed;
20 2. Groundcover voids that result from the removal of noxious weeds shall be revegetated with
21 regional native plants;
22 3. Removal of noxious weeds and other restoration work shall be undertaken with hand labor,
23 including handheld mechanical tools, unless the King County Noxious Weed Control Board Best
24 Management Practice specifically prescribe the use of riding mower, light mechanical cultivating
25 equipment, or herbicide or biological control methods; and
26 4. Herbicide use is in accordance with federal and state law.
- 27 C. Stormwater retrofit facilities installed pursuant to the city's NPDES Phase II permit.
- 28 D. Any pruning shall not be detrimental to tree health and shall be consistent with International Society
29 of Arboriculture standards and completed under the supervision of a qualified arborist.
- 30 **19.07.140 Reasonable Use Exception**
- 31 A. If the application of this chapter will deny all reasonable use of the owner's property, then the
32 applicant may apply to the Community Planning and Development department for an exception
33 from the requirements of this chapter in accordance with the provisions for Type IV reviews in
34 chapter 19.15 MICC. The hearing examiner may approve the application for a reasonable use
35 exception only if the development proposal meets all of the following criteria:
- 36 1. The application of this chapter would deny all reasonable use of the property;
37 2. There is no other reasonable use with less impact on the critical area;
38 3. Any alteration to critical areas and associated buffers is the minimum necessary to allow for
39 reasonable use of the property;
40 4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or
41 off the development proposal site;
42 5. The proposal is consistent with the purpose of this chapter and the public interest; and

6. The inability of the applicant to derive reasonable use of the property is not the result of actions by the current or prior property owner.

- B. The hearing examiner may approve, approve with conditions, or deny the request based on the proposal’s ability to comply with all of the above criteria. The applicant has the burden of proof in demonstrating that the above criteria are met.

19.07.150 Public Agency Exception

If the application of this chapter would prohibit a development proposal by a public agency, the agency may apply for an exception pursuant to this section:

- A. The public agency shall provide project documents such information as needed for the code official to issue a decision, including but not limited to, permit applications to other agencies, critical area studies, SEPA documents, and other materials.
- B. The code official may approve alterations to critical areas, buffers and critical area setbacks by an agency or utility when those alterations are not otherwise able to meet all of the standards in this chapter, and when the criteria in (B)(1) through (B)(3) of this section are demonstrated to be met.
 - 1. The activity or proposed development is described in an adopted city plan or project list, or has otherwise received city council approval;
 - 2. There is no other reasonable alternative to the activity or proposed development with less impact on the critical area. In determining what is a reasonable alternative to a proposed development, alteration or activity, the code official may consider the purpose, effectiveness, engineering feasibility, commercial availability of technology, best management practices, safety and cost of the alternative action or proposal. Reasonable alternatives are those that are capable of being carried out, taking into consideration the overall project purposes, needs, and objectives;
 - 3. The activity or development proposal is designed to avoid or minimize and mitigate the impact on critical areas and associated buffers consistent with the avoidance and mitigation sequencing requirements in 19.07.100 - Mitigation Sequencing;
 - 4. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; and
 - 5. The proposal is consistent with other applicable regulations and standards.

19.07.160 Geologically Hazardous Areas

- A. *Designation and Typing:* Geologically hazardous areas are lands that are susceptible to erosion, landslides, seismic events, or other factors as identified by WAC 365-190-120. These areas may not be suited for development activities because they may pose a threat to public health and safety. Areas susceptible to one or more of the following types of hazards shall be designated as geologically hazardous areas: landslide hazard areas, seismic hazard areas, and erosion hazard areas.
- B. *General Review Requirements:* Alteration within geologically hazardous areas or associated buffers is required to meet the standards in this section, unless the scope of work is exempt pursuant to MICC 19.07.120 - Exemptions or a Critical Area Review 1 approval has been obtained pursuant to MICC 19.07.090(A).
 - 1. When an alteration within a landslide hazard area, seismic hazard area or buffer associated with those hazards is proposed, the applicant must submit a critical area study concluding that the proposal can effectively mitigate risks of the hazard. The study shall recommend appropriate

1 design and development measures to mitigate such hazards. The code official may waive the
 2 requirement for a critical area study and the requirements of (B)(2) and (B)(3) of this section
 3 when he or she determines that the proposed development is minor in nature and will not
 4 increase the risk of landslide, erosion, or harm from seismic activity, or that the development
 5 site does not meet the definition of a geologically hazardous area.

6 2. Alteration of landslide hazard areas and seismic hazard areas and associated buffers may occur
 7 if the critical area study documents that the proposed alteration:

- 8 a. Will not adversely impact other critical areas;
- 9 b. Will not adversely impact the subject property or adjacent properties;
- 10 c. Will mitigate impacts to the geologically hazardous area consistent with best available
 11 science to the maximum extent reasonably possible such that the site is determined to be
 12 safe; and
- 13 d. Include the landscaping of all disturbed areas outside of building footprints and installation
 14 of hardscape prior to final inspection.

15 3. Alteration of landslide hazard areas, seismic hazard areas and associated buffers may occur if
 16 the conditions listed in subsection 2) are satisfied and the geotechnical professional provides a
 17 statement of risk matching one of the following:

- 18 a. An evaluation of site-specific subsurface conditions demonstrates that the proposed
 19 development is not located in a landslide hazard area or seismic hazard area;
- 20 b. The landslide hazard area or seismic hazard area will be modified or the development has
 21 been designed so that the risk to the site and adjacent property is eliminated or mitigated
 22 such that the site is determined to be safe;
- 23 c. Construction practices are proposed for the alteration that would render the development
 24 as safe as if it were not located in a geologically hazardous area and do not adversely impact
 25 adjacent properties; or
- 26 d. The development is so minor as not to pose a threat to the public health, safety and welfare.

27 C. *Development Standards – Landslide Hazard Areas:* Development is allowed within landslide hazard
 28 areas and associated buffers, when the following standards are met:

- 29 1. A critical area study shall be required for any alteration of a landslide hazard area or associated
 30 buffer;
- 31 2. Buffers shall be applied as follows. When more than one condition applies to a site, the largest
 32 buffer shall be applied.
 - 33 a. Steep slopes. Buffer widths shall be equal to the height of a steep slope, but shall not more
 34 than 75 feet, and applied to the top and toe of slopes;
 - 35 b. Shallow landslide hazard areas shall have minimum 25-foot buffers applied in all directions;
 36 and
 - 37 c. Deep-seated landslide hazard areas shall have 75-foot buffers applied in all directions.

38 D. *Development Standards – Seismic Hazard Areas:* When development is proposed within a seismic
 39 hazard area:

- 40 1. A critical area study shall be required and shall include an evaluation by a qualified professional
 41 for seismic engineering and design, a determination of the magnitude of seismic settling that
 42 could occur during a seismic event, and a demonstration that the risk associated with the

1 proposed alteration is within acceptable limits or that appropriate construction methods are
 2 provided to mitigate the risk of seismic settlement such that there will be no significant impact
 3 to life, health, safety, and property.

- 4 2. Identification of Seismic Hazard Areas: Seismic hazard areas shall be identified by a qualified
 5 professional who references and interprets information in the U.S. Geological Survey Active
 6 Faults Database, performs on-site evaluations, or applies other techniques according to best
 7 available science.
- 8 3. When development is proposed on a site with an active fault, the follow provisions shall apply:
 9 a. A 50-ft minimum buffer shall be applied from latest Quaternary, Holocene, or historical fault
 10 rupture traces as identified by the United States Geological Survey or Washington
 11 Geological Survey map databases or by site investigations by licensed geologic professionals
 12 with specialized knowledge of fault trenching studies; or
 13 b. Mitigation sequencing shall be incorporated into the development proposal as
 14 recommended based on geotechnical analysis by a qualified professional to prevent
 15 increased risk of harm to life and/or property.

16 E. *Development Standards – Erosion Hazard Areas:*

- 17 1. All development proposals shall demonstrate compliance with MICC Chapter 15.09 – Storm
 18 Water Management Plan.
- 19 2. No development or activity within an Erosion Hazard Area may create a net increase in
 20 geological instability on- or off- site.

21 F. *Development Standards – Additional Criteria for Specific Activities:*

- 22 1. Trail building within geologically hazardous areas shall be subject to the following:
 23 a. Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;
 24 and
 25 b. Trails shall be located to minimize the need for tree removal.
- 26 2. Land clearing, grading, filling, and foundation work within: 1) an erosion hazard area, when
 27 2,000 sq ft or more of site disturbance is proposed, and/or 2) a landslide hazard area are not
 28 permitted between October 1 and April 1.
 29 a. The code official may grant a waiver to this seasonal development limitation if the applicant
 30 provides a critical area study for the site concluding that:
 31 (1) geotechnical slope stability concerns, erosion and sedimentation impacts can be
 32 effectively controlled on-site consistent with adopted storm water standards; and
 33 (2) the proposed construction work will not subject people or property, including areas off-
 34 site, to an increased risk of associated impacts.
 35 b. As a condition of the waiver, the code official may require erosion control measures,
 36 restoration plans, an indemnification, a release agreement and/or performance bond.
 37 c. If site activities result in erosion impacts or threaten water quality standards, the city may
 38 suspend further work on the site and/or require remedial action.
 39 d. Failure to comply with the conditions of an approved waiver shall subject the applicant to
 40 code compliance pursuant to MICC Chapter 6.10 – Code Compliance, including but not
 41 limited to civil penalties and permit suspension.

42 **19.07.170 Fish and Wildlife Habitat Conservation Areas**

- 1 A. *Designation and Typing*: Fish and wildlife habitat conservation areas include the following:
2 1. Areas where state or federally-listed endangered, threatened, sensitive, or candidate species, or
3 species of local importance, have primary association;
4 2. Priority habitats and areas associated with priority species identified by the Washington State
5 Department of Fish and Wildlife;
6 3. Areas used by bald eagles for foraging, nesting, and roosting, or within 660 feet of a bald eagle
7 nest;
8 4. Watercourses and wetlands and their buffers; and
9 5. Biodiversity areas.

10 B. *General Review Requirements*:

- 11 1. When development is proposed in the areas described in subsection A, the applicant shall,
12 unless the proposal is specifically exempt pursuant to MICC 19.07.120, submit a wildlife habitat
13 assessment in the form of a critical area study prepared by a qualified professional including the
14 following information:
15 a. Identification of the species referenced in subsection A. that have a primary association with
16 habitat on or in the vicinity of the site;
17 b. Extent of wildlife habitat areas, including acreage, and required buffers based on the
18 species;
19 c. Vegetative, faunal, and hydrologic characteristics;
20 d. Evaluation of direct and indirect potential impacts on habitat by the project, including
21 potential impacts to water quality;
22 e. A discussion of any federal, state, or local special management recommendations, including
23 Washington State Department of Fish and Wildlife habitat management recommendations
24 that have been developed for the species or habitats; and
25 f. A discussion of avoidance, minimization, and mitigation of impacts pursuant to section
26 19.07.100 of this chapter.

27 C. *Development Standards*:

- 28 1. Development proposals shall implement wildlife and habitat protection measures identified in
29 the wildlife habitat assessment.
30 2. Development proposals within areas used by bald eagles for foraging, nesting, or roosting, or
31 within 660 feet of a bald eagle nest as identified by a critical area study shall follow the
32 requirements of the US Fish and Wildlife's *National Bald Eagle Management Guidelines* (2007).

33 **19.07.180 Watercourses**

34 A. *Designation and Typing*: Watercourses shall be classified by the following types:

- 35 1. Type S (there are no known Type S watercourses on Mercer Island);
36 2. Type F;
37 3. Type Np;
38 4. Type Ns; and
39 5. Piped.

40 B. *General Review Requirements*

- 41 1. Development within watercourses and/or associated buffers is prohibited unless one of the
42 following conditions applies:

- 1 a. The proposed activity is specifically exempt pursuant to MICC 19.07.120;
- 2 b. A Critical Area Review 1 application is reviewed and approved for one of the modifications in
- 3 MICC 19.07.130; or
- 4 c. The proposed activity is permitted under subsection (D) Development Standards –
- 5 Additional Criteria for Specific Activities, below.

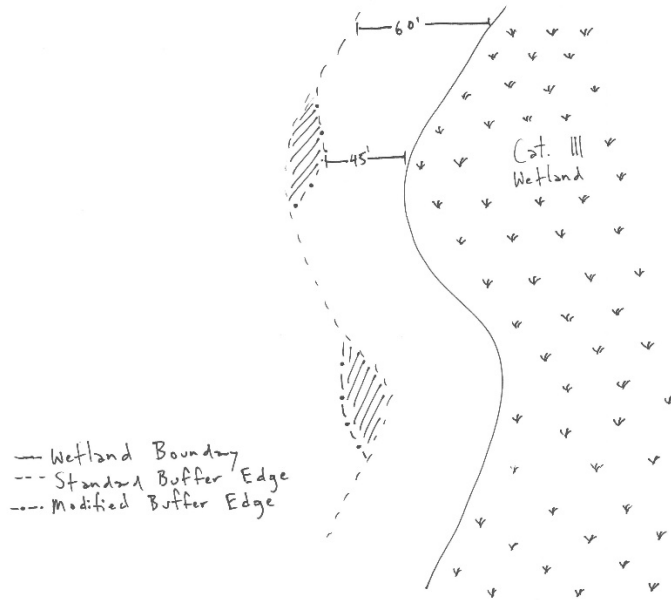
6 C. *Development Standards – Buffers*

- 7 1. The following minimum buffers shall be established from the ordinary high water mark or from
- 8 the top of the bank if the ordinary high water mark cannot be identified:

Watercourse Type	Standard Buffer
F	120 feet
Np	60 feet
Ns	60 feet
Piped	No buffer

- 9 2. Neither lot coverage nor hardscape shall be permitted within a watercourse or watercourse
- 10 buffer except as specifically provided in this chapter.
- 11 3. Any watercourse adjoined by a riparian wetland or other contiguous critical area shall have the
- 12 buffer required for the stream type involved or the buffer that applies to the wetland or other
- 13 critical area, whichever is greater.
- 14 4. Buffer Averaging. Buffer width averaging shall be allowed provided the following requirements
- 15 are met:
- 16 a. The applicant has demonstrated how impacts will be minimized and that avoidance has
- 17 been addressed consistent with MICC 19.07.100 – Mitigation Sequencing;
- 18 b. The applicant has demonstrated how all proposed impacts have been mitigated consistent
- 19 with subsection (E) - Mitigation Requirements of this section and will not result in a loss of
- 20 ecological function;
- 21 c. The proposed buffer width is not less than 75% of the standard buffer width at any point;
- 22 and

- 1 d. The total area of the buffer is equal to the area required without averaging.

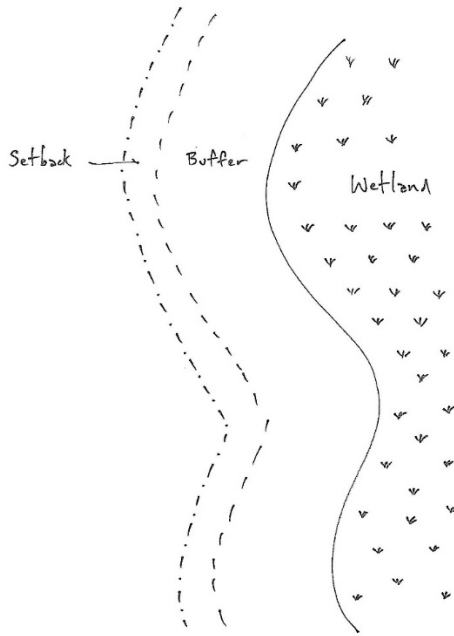


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3 *Figure 1: Example of buffering averaging*

- 4 5. Buffer Reduction. Buffer width reduction shall be allowed provided the following requirements
5 are met:
- 6 a. The applicant has demonstrated that buffer averaging would not feasibly allow
7 development;
 - 8 b. The applicant has demonstrated how impacts will be minimized and that avoidance has
9 been addressed consistent with MICC 19.07.100 – Mitigation Sequencing;
 - 10 c. The applicant has demonstrated how all proposed impacts have been mitigated consistent
11 with subsection (E) of this section and will not result in a loss of ecological function;
 - 12 d. The proposed buffer width is not less than 75% of the standard buffer width at any point;
13 and
 - 14 e. The proposed buffer reduction is not proposed in conjunction with buffer averaging.
- 15 6. Piped watercourse setbacks
- 16 a. The intent of applying setbacks to piped watercourses is to preserve the opportunity to
17 daylight watercourses that were previously piped, to provide incentives to property owners
18 to daylight and enhance previously piped watercourses, and to allow flexibility for
19 development where daylighting piped watercourses is demonstrated to be infeasible.
 - 20 b. Setbacks shall be established 45 ft from the centerline of a piped watercourses.
 - 21 c. Piped watercourses setback widths shall be reduced to a 15-foot buffer when the portion of
22 the piped watercourse on the applicant’s property is daylighted and where the watercourse
23 has been restored to an open channel, provided a restoration plan demonstrates:
 - 24 (1) The watercourse channel will be stable and is not expected to cause safety risks or
25 environmental damage; and
 - 26 (2) No additional impact nor encumbrance by watercourse buffer or critical area setback is
27 added to properties neighboring the applicant(s) property.

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- d. Piped watercourse setback widths shall be reduced to: 1) 10 feet on lots with a lot width of 50 feet or more, and 2) 5 feet on lots with a width of less than 50 feet, when daylighting is determined by qualified professional(s) to result in one or more of the following outcomes:
 - (1) Increased risk of landslide or other potential hazard that cannot be mitigated;
 - (2) Increased risk of environmental damage (e.g., erosion, diminished water quality) that cannot be mitigated;
 - (3) The inability of a legally established existing lot to meet the vehicular access requirements of this title; or
 - (4) The inability of a legally established existing lot to meet the building pad standards in MICC 19.09.090.
- 7. Buildings and other structures shall be set back a minimum of 10 feet from the edges of a watercourse buffer. The distance may be reduced to five feet if:
 - a. The watercourse is Type Ns;
 - b. The buffer does not contain habitat for WDFW priority species.
 - c. A split-rail fence is installed along the perimeter of the buffer; and
 - d. Survey markers are installed along the perimeter of the buffer to establish its field location.



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Figure 2 Example of critical area setback

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- 8. The following may be allowed in the critical area setback, provided no structures nor building overhangs may be closer than five feet from the edge of a watercourse buffer:
 - a. Landscaping;
 - b. Uncovered decks less than 30 inches above existing or finished grade, whichever is lower;
 - c. Building overhangs if such overhangs do not extend more than 18 inches into the setback area;

- d. Hardscape and driveways; provided, that such improvements may be subject to requirements in Chapter 15.09 MICC – Storm Water Master Program;
- e. Split rail fences;
- f. Trails, consistent with the requirements of this chapter; and
- g. Subgrade components of foundations, provided that any temporary impacts to building setbacks shall be restored to their previous condition or better.

D. Development Standards – Additional Criteria for Specific Activities:

- 1. New watercourse crossings, such as bridges and culverts, may be permitted provided the standards in WAC 220-660-190 have been demonstrated to be met.
- 2. The construction of trails within watercourse buffers is allowed, subject to the following:
 - a. Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;
 - b. Trails shall be located to minimize the need for tree removal; and
 - c. Trails shall be located only in the outer 25 percent of the buffer area.
- 3. The trail width shall be added to the buffer width applied to the watercourse (e.g., if a trail is three feet wide, the watercourse buffer for the portion of the watercourse where the trail is located shall be expanded by three feet); except that the trail width shall not be added to the buffer width when trails are being created for public access and contained within a public access easement or right-of-way.

E. Mitigation requirements: Mitigation measures shall achieve equivalent or greater ecological function including, but not limited to:

- 1. Habitat complexity, connectivity, and other biological functions;
- 2. Seasonal hydrological dynamics, water storage capacity and water quality; and
- 3. Geomorphic and habitat processes and functions

19.07.190 Wetlands

A. Designation and Typing: Wetlands shall be identified and their boundaries delineated in accordance with the approved federal delineation manual and applicable regional supplements described in WAC 173-22-035. Wetlands shall be rated according to the Washington State Rating System for Western Washington: 2014 Update (Hruby, 2014), or most current update.

B. General Review Requirements:

- 1. In addition to the critical area study requirements listed in MICC 19.07.110 – Critical Area Studies, critical area studies on wetlands shall also include:
 - a. Wetland rating forms and datasheets;
 - b. Discussion of landscape setting;
 - c. A functional analysis of the project demonstrating that there will be no loss of ecological function; and
 - d. A mitigation plan.
- 2. Wetland delineations are valid for five years.
- 3. Wetlands must be delineated and rated by a qualified professional.

C. Development Standards – Buffers:

- 1. The following minimum buffers shall be established from the wetland boundary:.

EXHIBIT A

Wetland Category	Standard Buffer	
	With 3-5 habitat points	With 6-7 habitat points
Category I	75 ft	110 ft
Category II	75 ft	110 ft
Category III	60 ft	110 ft
Category IV	40 ft	

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2. Where a legally established and constructed street transects a wetland buffer, the department may approve a modification of the standard buffer width to the edge of the street if the isolated part of the buffer does not provide additional protection of the wetland and provides insignificant biological, geological or hydrological buffer functions relating to the wetland.
3. Prohibited activities: The following uses are prohibited within any wetland or associated buffer: removal, excavation, grading, or dredging of material; draining flooding or disturbing the wetland, water level or water table; construction, reconstruction, demolition, or expansion of any structure.
4. Neither lot coverage nor hardscape shall be permitted within a wetland or wetland buffer except as specifically provided in this chapter.
5. Buffer Averaging. Buffer width averaging shall be allowed provided the following requirements are met:
 - a. The applicant has demonstrated how impacts have been avoided consistent with MICC 19.07.100 – Mitigation Sequencing;
 - b. The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection (E) of this section and will not result in a loss of ecological function;
 - c. The proposed buffer width is not less than 75% of the standard buffer width at any point; and
 - d. The total area of the buffer is equal to the area required without averaging.
6. Buffer Reduction. Buffer width reduction shall be allowed provided the following requirements are met:
 - a. The applicant has demonstrated that buffer averaging would not feasibly allow development;
 - b. The applicant has demonstrated how impacts will be minimized and that avoidance has been addressed consistent with MICC 19.07.100 – Mitigation Sequencing;
 - c. The applicant has demonstrated how all proposed impacts have been mitigated consistent with subsection (E) of this section and will not result in a loss of ecological function;
 - d. The proposed buffer width is not less than 75% of the standard buffer width at any point; and
 - e. The proposed buffer reduction is not proposed in conjunction with buffer averaging.
7. Buildings and other structures shall be set back a minimum of 10 feet from the edges of a wetland buffer. The distance may be reduced to five feet if:
 - a. The wetland is:

- 1 (1) hydrologically isolated;
- 2 (2) Category III or IV;
- 3 (3) less than 1,000 square feet
- 4 (4) in an area that is not associated with riparian areas or buffers;
- 5 (5) not part of a wetland mosaic, and
- 6 (6) does not contain habitat for WDFW priority species.
- 7 b. A split-rail fence is installed along the perimeter of the buffer; and
- 8 c. Survey markers are installed along the perimeter of the buffer to establish its field location.
- 9 8. The following may be allowed in the critical area setback, provided no structures nor building
- 10 overhangs may be closer than five feet from the edge of a wetland buffer:
- 11 a. Landscaping;
- 12 b. Uncovered decks less than 30 inches above existing or finished grade, whichever is lower;
- 13 c. Building overhangs if such overhangs do not extend more than 18 inches into the setback
- 14 area;
- 15 d. Hardscape and driveways; provided, that such improvements may be subject to
- 16 requirements in Chapter 15.09 MICC – Storm Water Master Program;
- 17 e. Split rail fences;
- 18 f. Trails, consistent with the requirements of this chapter; and
- 19 g. Subgrade components of foundations, provided that any temporary impacts to building
- 20 setbacks shall be restored to their previous condition or better.
- 21 D. *Development Standards – Additional Criteria for Specific Activities:*
- 22 1. Alterations to wetlands are allowed when the applicant has demonstrated how mitigation
- 23 sequencing has been applied pursuant to MICC 19.07.100 – Mitigation Sequencing and when
- 24 the applicant has demonstrated that the wetland is:
- 25 a. All isolated Category IV wetlands less than 4,000 square feet that:
- 26 (1) Are not associated with riparian areas or their buffers
- 27 (2) Are not associated with shorelines of the state or their associated buffers
- 28 (3) Are not part of a wetland mosaic
- 29 (4) Do not score 5 or more points for habitat function based on the 2014 update to the
- 30 Washington State Wetland Rating System for Western Washington: 2014 Update
- 31 (Ecology Publication #14-06-029, or as revised and approved by Ecology)
- 32 (5) Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the
- 33 Washington Department of Fish and Wildlife, do not contain federally listed species or
- 34 their critical habitat, or species of local importance identified in MICC 19.07.180.
- 35 b. Wetlands less than 1,000 square feet that meet the above criteria and do not contain
- 36 federally listed species or their critical habitat are exempt from the buffer provisions
- 37 contained in this Chapter.
- 38 2. The construction of trails within wetland buffers is allowed, subject to the following
- 39 requirements:
- 40 a. Trail surfaces shall be constructed of pervious materials and may not be wider than five feet;
- 41 b. Trails shall be located to minimize the need for tree removal; and
- 42 c. Trails shall be located only in the outer 25 percent of the buffer area.

- 1 d. The trail width shall be added to the buffer width applied to the wetland (e.g., if a trail is
 2 three feet wide, the wetland buffer for the portion of the wetland where the trail is located
 3 shall be expanded by three feet); except that the trail width shall not be added to the buffer
 4 width when trails are being created for public access and contained within a public access
 5 easement or right-of-way.
- 6 3. Development proposals shall incorporate the following measures unless the applicant can
 7 demonstrate that they would result in no net environmental benefit or that they are not
 8 applicable.

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	Locate activity that generates noise away from wetland If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the out wetland buffer
Toxic runoff	Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered Establish covenants requiring the use of integrated pest management techniques to limit the use of pesticides within 150 ft of wetland
Stormwater runoff	Retrofit stormwater detention and treatment for roads and existing adjacent development Prevent channelized flow from lawns that directly enters the buffer Use Low Impact Development techniques
Changes in water regime	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	Protect wetlands and associated buffers with conservation or native growth protection easements
Dust	Use best management practices to control dust
Disruption of corridors or connections	Maintain connections to offsite areas that are undisturbed Restore corridors or connections to offsite habitats by replanting

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- 10 E. *Mitigation Requirements:* When mitigation for wetland and/or wetland buffer impacts is required,
 11 mitigation shall meet the requirements listed below:

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions compared to pre-development conditions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication #09-06-32, Olympia, WA, December 2009 as revised).
2. Mitigation for alterations to wetland(s) and/or wetland buffer(s) shall achieve equivalent or greater ecological function.
3. No Net Loss. Wetland mitigation actions shall not result in a net loss of wetland area.
4. Mitigation actions shall be in-kind and conducted within the same sub-basin and on the same site as the alteration except when the following apply:
 - a. There are no reasonable on-site opportunities for mitigation on-site opportunities do not have a high likelihood of success due to adjacent land uses;
 - b. On-site buffers or connectivity are inadequate;
 - c. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
 - d. Off-site locations have been identified and evaluated in the following order of preference:
 - (1) Within the same drainage sub-basin;
 - (2) Within the city limits;
 - (3) Within the Mercer Island service area for an approved mitigation bank program site within the WRIA 8 in accordance with the requirements in subsection (E)(5) below.
 - e. Where feasible, off-site mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following site disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.
5. Mitigation Ratios:
 - a. The following ratios shall apply to required wetland mitigation. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.
 - b. Permanent Wetland Mitigation. The following ratios of area of mitigation to area of alteration apply to mitigation measures for permanent alterations.

Wetland Category	Creation	1:1 Wetland reestablishment or wetland creation (R/C) and wetland enhancement (E) Enhancement
Category I	4:1	1:1 R/C and 12:1
Category II	3:1	1:1 R/C and 8:1
Category III	2:1	1:1 R/C and 4:1
Category IV	1.5:1	1:1 R/C and 2:1

- 1 c. Temporary Wetland Mitigation. The following ratios of area of mitigation to area of
 2 alteration apply to mitigation measures for temporary alterations where wetlands will not
 3 be impacted by permanent fill material:

Wetland Category	Creation	Enhancement
Category I	1.5:1	3:1
Category II	0.75:1	1.5:1
Category III	0.5:1	1:1
Category IV	Not applicable	Not applicable

- 4 d. Wetland Buffer Replacement Ratio. Altered wetland buffer area shall be replaced at a
 5 minimum ratio of one-to-one; provided, that the replacement ratio may be increased if
 6 needed to replace lost functions and values.
- 7 e. Increased Mitigation Ratio. The code official may increase the ratios under the following
 8 circumstances:
- 9 (1) Uncertainty exists as to the probable success of the proposed restoration or creation; or
 - 10 (2) A significant period of time will elapse between impact and replication of wetland
 11 functions; or
 - 12 (3) Proposed mitigation will result in a lower category wetland or reduced functions relative
 13 to the wetland being impacted; or
 - 14 (4) The impact was an unauthorized impact.
- 15 f. Decreased Mitigation Ratio. The code official may decrease these ratios under the following
 16 circumstances:
- 17 (1) Documentation by a qualified professional demonstrates that the proposed mitigation
 18 actions have a very high likelihood of success. This documentation should specifically
 19 identify how the proposed mitigation actions are similar to other known mitigation
 20 projects with similar site-specific conditions and circumstances that have been shown to
 21 be successful; or
 - 22 (2) Documentation by a qualified professional demonstrates that the proposed mitigation
 23 actions will provide functions and values that are significantly greater than the wetland
 24 being impacted; or
 - 25 (3) The proposed mitigation actions are conducted in advance of the impact and have been
 26 shown to be successful over the course of at least one full year.
- 27 6. Wetland Banking.
- 28 a. Credits from a wetland mitigation bank may be approved for use as compensation for
 29 unavoidable impacts to wetlands when:
 - 30 (1) The criteria in subsection (E)(4) are demonstrated to have been met;
 - 31 (2) The bank is certified under chapter 173-700 WAC;
 - 32 (3) A qualified professional has demonstrated that the wetland mitigation bank provides
 33 appropriate compensation for the authorized impacts;
 - 34 (4) The proposed use of credits is consistent with the terms and conditions of the bank's
 35 certification; and
 - 36 (5) The compensatory mitigation agreement occurs in advance of authorized impacts.

EXHIBIT A

- 1 b. Replacement ratios for projects using bank credits shall be consistent with replacement
2 ratios specified in the bank's certification.
- 3 c. Credits from a certified wetland mitigation bank may be used to compensate for impacts
4 located within the service area specified in the bank's certification. In some cases, bank
5 service areas may include portions of more than one adjacent drainage basin for specific
6 wetland functions.
- 7 7. Preference of Mitigation Actions. Compensatory wetland mitigation shall occur in the following
8 order of preference:
 - 9 a. Restoration
 - 10 b. Creation
 - 11 c. Enhancement
 - 12 d. Preservation
- 13 8. Site protection: As a condition of any permit or land use approval, the code official may require
14 permanent fencing and signage to be installed around the wetland or buffer. Fencing installed as
15 part of a proposed activity or as required in this subsection shall be designed to not interfere
16 with species migration, including fish runs, and shall be constructed in a manner that minimizes
17 impacts to the wetland and associated habitat.

1 19.09.090 Building Pad

2 [...]

3 2. Building pads shall not be located within:

- 4 a. Required front, rear, or side yard setbacks;
- 5 b. Streets or rights-of-way; and
- 6 c. Critical areas, ~~or~~ buffers, or critical area setbacks; provided building pads may be located
- 7 within geohazard hazard areas and associated buffers and setbacks when all of the
- 8 following are met:

9 [...]

10 C. New buildings shall be located within the building pad established by subsection A or B of this

11 section. Legally established nonconforming portions of existing buildings and additions made pursuant

12 to 19.07.130 Modifications may be located outside of building pads.

13 19.10.050 - Tree removal – Not associated with a development proposal.

14 A. Tree removal that is not associated with a development proposal shall provide replacement trees

15 (MICC 19.10.070), but is exempt from tree retention (MICC 19.10.060), if the proposal is located

16 outside of wetlands, watercourses, landslide hazard areas and buffers associated with these critical

17 areas.

18 B. Tree removal that is not associated with a development proposal located within wetlands,

19 watercourses, landslide hazard areas and buffers associated with these critical area types shall be

20 permitted subject to the following standards:

21 1. One or more of the following criteria applies to the tree(s) proposed for removal:

- 22 a. The tree is documented to be a hazard tree by a TRAQ-qualified arborist;
- 23 b. The tree is documented by a qualified arborist to be diseased, in decline, or not viable for
- 24 retention; or
- 25 c. The removal of the tree will enhance ecosystem functions and values and/or promote slope
- 26 stability.

27 2. A restoration plan prepared by a qualified professional is submitted that contains the following:

- 28 a. Analysis demonstrating how the ecological functions and values including but not limited to
- 29 slope stabilization, hydrologic function, and habitat value, are being preserved by the
- 30 proposed plan.
- 31 b. Proposed removal of all noxious weeds, as defined in Chapter 19.16 MICC.
- 32 c. Removed trees shown as made into snags at a safe height, where feasible.

33 3. Implementation of approved restoration plans shall be completed by a qualified professional.

34 ~~B.C.~~ An application for tree removal that is not associated with a development proposal shall provide the

35 application information described under MICC 19.10.090(A) – General Information.

36 ~~C.D.~~ This section shall not be construed as an exemption to the tree retention and replacement

37 requirements of Chapter 19.07 MICC.

38 [...]

39 Chapter 19.15.030 – Land Use Review Types

Table A. Land Use Review Type

<ul style="list-style-type: none"> • Home business • Seasonal development limitation waiver • Nonmajor single-family dwelling building permits • Tree removal permit • Right-of-way permit • Special needs group housing safety determination • Tenant improvement/change of use • Shoreline exemption¹ • Critical areas determination (steep slope alteration) Critical Area Review 1 • Final short plat • Temporary commerce on public property • Site development permits • Transportation concurrency certificate 	<ul style="list-style-type: none"> • Modified wireless communication facilities (6409 per 47 CFR 1.40001) • Lot line revision • Setback deviations • Final plat^{2,3} • Code official design review • Accessory dwelling unit • Parking variances (reviewed by city engineer) 	<ul style="list-style-type: none"> • New and modified wireless (non-6409) eligible facility • SEPA threshold determination • Critical areas determination (wetland/watercourse buffer averaging/reduction) Critical Area Review 2 • Public Agency Exception • Temporary encampment⁴ • Short plat alteration and vacations • Preliminary short plat • Development code interpretations • Major single-family dwelling building permit • Shoreline substantial development permit¹ • Shoreline revision (substantial development)¹ 	<ul style="list-style-type: none"> • Preliminary long plat approval • Conditional use permit • Variance • Critical areas reasonable use exception • Long plat alteration and vacations • Parking variances (reviewed by design commission) • Variance from short plat acreage limitation • Wireless communication facility height variance • Planned unit development • Design commission design review • Permanent commerce on public property • Shoreline conditional use permit (SCUP)⁵ • Shoreline variance⁵ • Shoreline revision
---	--	---	---

Table A. Land Use Review Type

([variance](#) and SCUP)

1 19.15.050

2 [...]

3 C. Required Preapplication Meetings. Preapplication meetings are required for Type III and Type IV land
4 use reviews [and for new development within landslide hazard areas](#). Preapplication meetings may be
5 held for any other development proposal at the request of the applicant. This requirement may be
6 waived by the code official.

7 Chapter 19.16

8 19.15.180 Additional procedures for shoreline review.

9 A. Open Record Public Hearing. An open record public hearing before the code official shall be
10 conducted on the shoreline substantial development permits, shoreline conditional use permits, and
11 shoreline variances when, within the 30-day comment period, 10 or more interested citizens file a
12 written request for a public hearing.

13 B. Ecology Filing. The applicant shall not begin construction until after 21 days from the date of ~~receipt~~
14 [filing by with](#) the Department of Ecology and Attorney General and/or any appeals are concluded. The
15 applicant shall also comply with all applicable federal, state and city standards for construction.

16 C. Shoreline Substantial Development Permit Decisions. The city's action in approving, approving with
17 conditions, or denying any substantial development permit or shoreline exemption is final unless an
18 appeal is filed in accordance with applicable laws. The city shall send the shoreline permit [and](#)
19 [documentation of final local](#) decisions to the applicant, the Department of Ecology, the Washington
20 State Attorney General and to all other applicable local, state, or federal agencies. The decision shall be
21 sent to the Department of Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

22 D. Shoreline Conditional Use Permits and Shoreline Variances. The final decision in approving,
23 approving with conditions, or denying a shoreline conditional use permit or shoreline variance is
24 rendered by the Department of Ecology in accordance with WAC 173-27-200, and all other applicable
25 local, state, or federal laws. The city shall send the shoreline permit [and documentation of final local](#)
26 decision to the applicant, the Department of Ecology, the Washington State Attorney General and to all
27 other applicable local, state, or federal agencies. The decision shall be sent to the Department of
28 Ecology by return receipt requested mail or as regulated by WAC 173-27-130.

1 DEFINITIONS Revised 8/18

2 Sections:

3 19.16.010 Definitions

4

5 [...] Alteration: Any human-induced action which ~~adversely~~ impacts the existing condition of the area,
6 including but not limited to grading, filling, dredging, draining, channeling and paving (including
7 construction and application of gravel). “Alteration” does not include walking, passive recreation,
8 fishing, or similar activities.

9 [...] Biodiversity Areas: Publicly-owned lands that consist of habitat that is valuable to fish or wildlife,
10 mostly comprised of native vegetation, and protected in City parks and open space, including but not
11 limited to Mercedale Park and Hillside, Upper Luther Burbank Park, Gallagher Hill Open Space,
12 Southeast 53rd Open Space, Island Crest Park, Pioneer Park Open Space, and Ellis Pond.

13 [...] Buffer: A designated area: 1) contiguous to a steep slope or landslide hazard area intended to
14 protect slope stability, attenuation of landslide hazards; or, 2) contiguous to a habitat conservation area,
15 stream or wetland intended to protect the ecological functions and values of the habitat, stream or
16 wetland. ~~A designated area adjoining a critical area intended to protect the critical area from~~
17 ~~degradation.~~

18 [...] Clearing: The act of destroying or removing trees or groundcover from any undeveloped or partially
19 developed lot, public lands, or public right-of-way. ~~Clearing may only occur on these lots with approval~~
20 ~~by the city.~~

21 [...] Critical Area Review 1: An approval allowing one or more actions listed in MICC 19.07.140
22 Modifications within a critical area or buffer.

23 [...] Critical Area ~~Alteration~~ Review 2: An approval allowing reduction or averaging of a wetland or
24 watercourse buffer, or alteration of a geologically hazardous area.

25 -[...] Dock. A structure that floats on the surface of the water, without piling supports, but that is
26 attached to land. Typically used for boat moorage, swimming, public access, and other activities that
27 require access to deep water. This definition of docks shall also include “piers” for the purposes of Title
28 19.

29 Fish and Wildlife Habitat Conservation Areas: 1. Areas where state or federally-listed endangered,
30 threatened, sensitive, or candidate species, or species of local importance, have primary association; 2.
31 Priority habitats and areas associated with priority species identified by the Washington State
32 Department of Fish and Wildlife; 3. Areas used by bald eagles for foraging, nesting, and roosting, or
33 within 660 feet of a bald eagle nest; 4. Watercourses and wetlands and their buffers; and 5. Biodiversity
34 areas. Those areas the city council determines are necessary for maintaining species in suitable habitats
35 within their natural geographic distribution so that isolated subpopulations are not created consistent
36 with WAC Title 365.

37 [...] ~~Fish Use or Used by Fish: Those areas within a watercourse where live fish normally exist for~~
38 ~~spawning rearing and/or migration. “Fish use” may be presumed to occur in those reaches of~~

~~watercourses that have year round flow, are accessible from Lake Washington to juvenile salmonid fish and have an average bed slope of less than 12 percent. "Fish use" shall not be presumed for (1) intermittent or seasonal reaches; (2) for reaches with an average bed slope of 12 percent or greater; (3) for reaches upstream from road culverts with a bottom slope of 10 percent or greater; or (4) reaches with greater than a 12-inch drop from the downstream invert of the culvert to the downstream pool elevation at ordinary high water. If the uppermost point of fish use cannot be identified with simple, nontechnical observations, then the upper extent of fish use should be determined using the best professional judgment of a qualified professional after considering actual conditions and the physical abilities and capabilities of juvenile salmonid fish.~~

[...] Fish habitat: Habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat.

[...] Geologically Hazardous Areas: Areas susceptible to erosion, sliding, earthquake, or other geological events based on a combination of slope (gradient or aspect), soils, geologic material, hydrology, vegetation, or alterations, including landslide hazard areas, erosion hazard areas and seismic hazard areas.

[...] Landslide Hazard Area, Shallow: Landslide hazard area with a failure depth of 15 feet or less thick.

[...] Landslide Hazard Area, Deep-seated: Landslide hazard area with a failure depth more than 15 feet thick.

[...] Noxious weed: Any plant which when established is highly destructive, competitive, or difficult to control by cultural or chemical practices (see Chapter 5.10 RCW). The state noxious weed list in Chapter 16-750 WAC, as compiled by the State Noxious Weed Control Board, together with the King County Noxious Weed and Weeds of Concern lists, is the officially adopted list of noxious weeds for the city.

~~[...] Lift Station (Boat Hoist): A structure or device used to raise a watercraft above the waterline for secure moorage purposes.~~

[...] Pier. A structure that projects over and is raised above the water but is attached to land, and that is used for boat moorage, swimming, fishing, public access, float plane moorage, or similar activities requiring access to deep water.

[...] Public Access Pier or Boardwalk. A structure which is constructed waterward of the ordinary high water mark and intended for public use.

[...] Qualified Professional: A person ~~who performs studies, field investigations, and plans on critical areas and has an educational background and/or relevant experience in the field, as determined by the code official.~~ with experience, training and competence in the pertinent discipline. A qualified professional must be licensed to practice in the State of Washington in the related professional field, if such field is licensed. If not licensed, a qualified professional must have a national certification in the pertinent field. If neither licensing nor national certification in the field exists, the minimum qualification should be a bachelor's degree with 10 years of related professional work, or master's degree in the field and three years of related professional work. Minimum qualifications for specific fields of practice shall include but not be limited to the following:

- 1 A. Arborists must be qualified arborists as defined in MICC 19.16.010
- 2 B. Professional for geologic hazard areas must be licensed and endorsed in the State of Washington as
- 3 a geotechnical engineer or engineering geologist.
- 4 C. Professional for watercourses and other fish and wildlife habitat must have a degree in biology,
- 5 environmental planning, natural science, stream ecology or related field and the minimum years of
- 6 experience, listed above, related to the subject habitat or species.
- 7 D. Professionals for vegetation restoration planning where specific expertise for wetlands,
- 8 watercourses or other fish and wildlife habitat is not required must have a degree in botany,
- 9 environmental planning, natural science, ecology, landscape architecture or a related field and the
- 10 minimum years of experience, listed above, with an emphasis on restoration ecology and vegetation
- 11 management associated with critical areas and buffer. Professionals must demonstrate a minimum
- 12 of three years of experience with the type of critical area or buffer for which the critical area report
- 13 is being submitted.
- 14 E. Professionals for wetlands must be currently certified as a Professional Wetland Scientist (PWS) with
- 15 the Society of Wetland Scientists or meet the minimum education and years of experience, listed
- 16 above, as a wetlands professional.
- 17 F. Minimum qualifications of professionals for other disciplines shall be consistent with the minimum
- 18 qualifications defined above and specific to the discipline identified.

19 [...] Setback: The distance between a development and other feature such as a property line or critical
20 areas buffer.

21
22 Watercourses: A course or route, formed by nature and generally consisting of a channel with a bed,
23 banks, or sides throughout substantially all its length, along which surface waters, with some regularity
24 (annually in the rainy season), naturally and normally flow in draining from higher to lower lands. This
25 definition does not include irrigation and drainage ditches, grass-lined swales, canals, storm water
26 runoff devices, or other courses unless they are used by fish or to convey waters that were naturally
27 occurring prior to construction.

28 ~~Watercourses — Intermittent or Seasonal Flow: Those watercourses that go dry or exhibit zero surface~~
29 ~~discharge at any point during water years with normal rainfall as determined from climatological data~~
30 ~~published for the Seattle-Tacoma International Airport by the National Oceanic and Atmospheric~~
31 ~~Administration or its successor agency.~~

32 ~~If the lowermost point of either year-round flow or intermittent or seasonal flow cannot be identified~~
33 ~~with simple, nontechnical observations, or if climatological data show that rainfall is significantly above~~
34 ~~normal for the water year, then the point of flow should be determined using the best professional~~
35 ~~judgment of a qualified professional after considering actual conditions and the climatological data.~~

36 ~~Watercourses — Year Round Flow: Those watercourses that do not go dry any time during water years~~
37 ~~with normal rainfall as determined from climatological data published for the Seattle-Tacoma~~
38 ~~International Airport by the National Oceanic and Atmospheric Administration or its successor agency.~~
39 ~~For the purpose of watercourse typing, watercourses with year round flow may include intermittent or~~
40 ~~seasonal reaches below the uppermost point of year round flow during normal water years.~~

41 Watercourses shall be classified according to the following types:

- 1 A) Type S, which include all waters, within their bankfull width, as inventoried as "shorelines of the
2 state," which are regulated by the city's Shoreline Master Program pursuant to chapter 90.58 RCW.
3 B) Type F, which include segments of natural waters other than Type S Waters, which are within the
4 bankfull widths of defined channels and periodically inundated areas of their associated wetlands,
5 or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low
6 water and which in any case contain fish habitat.
7 C) Type Np, which include all segments of natural waters within the bankfull width of defined channels
8 that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry
9 any time of a year of normal rainfall and include the intermittent dry portions of the perennial
10 channel below the uppermost point of perennial flow.
11 D) Type Ns, which include all segments of natural waters within the bankfull width of the defined
12 channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which
13 surface flow is not present for at least some portion of a year of normal rainfall and are not located
14 downstream from any stream reach that is a Type Np Water. Ns Waters must be physically
15 connected by an above-ground channel system to Type S, F, or Np Waters.
16 E) Piped Watercourses, which are pipes or other conveyances through which surface waters, with
17 some regularity (annually in the rainy season), naturally and normally flow in draining from higher to
18 lower lands. This definition does not include irrigation and drainage ditches, grass-lined swales,
19 canals, storm water runoff devices, or other courses unless they are used by fish or to convey waters
20 that were naturally occurring prior to construction.

21
22 Wetland Classification System: Those categories set forth in the Washington State Wetland Rating
23 System for Western Washington, Publication #~~04-06-025~~14-06-029 dated ~~August, 2004~~October, 2014. A
24 summary of the classification system is provided below:

- 25 1. Category I. Category I wetlands are those that meet the following criteria:
- 26 a. Wetlands that are identified by scientists as high quality or high function wetlands;
- 27 b. Bogs larger than one-half acre;
- 28 c. Mature and old-growth forested wetlands larger than one acre; or
- 29 d. Wetlands that are undisturbed and contain ecological attributes that are impossible
- 30 to replace within a human lifetime.
- 31 2. Category II. Category II wetlands are not defined as Category I wetlands and meet the
- 32 following criteria:
- 33 a. Wetlands that are identified by scientists as containing "sensitive" plant species;
- 34 b. Bogs between one-quarter and one-half acre in size; or
- 35 c. Wetlands with a moderately high level of functions.
- 36 3. Category III. Category III wetlands do not satisfy Category I or II criteria, and have a moderate
- 37 level of functions. These wetlands generally have been disturbed in some ways, and are often
- 38 less diverse or more isolated from other natural resources than Category II wetlands.

EXHIBIT B

1 4. Category IV. Category IV wetlands do not satisfy Category I, II or III criteria; and have the
2 lowest level of functions; and are often heavily disturbed.

3

4 Wetland Manual: Identification of wetlands and delineation of their boundaries shall be done in
5 accordance with the most ~~currently~~ recently approved Army Corps of Engineers wetlands delineation
6 manual and applicable regional supplements.

**CITY OF MERCER ISLAND
ORDINANCE NO. 19C-06**

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, REPEALING MICC 19.07.110 AND ADOPTING A NEW CHAPTER 19.13 MICC RELATED TO SHORELINE REGULATIONS; PERMITTING CORRECTION OF SCRIVENER'S ERRORS DURING CODIFICATION; AUTHORIZING ISSUANCE OF RULES TO ADMINISTER THE AMENDED CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Mercer Island City Code (MICC) contains a Shoreline Master Program, adopted pursuant to RCW 90.58.080; and,

WHEREAS, WAC 173-26-090 requires a review of the City's Shoreline Master Program by June 30, 2019; and,

WHEREAS, the Mercer Island City Council directed the Planning Commission to review the Shoreline Master Program to ensure compliance with applicable state rules and statute; and,

WHEREAS, the Mercer Island Planning Commission reviewed the policies and regulations related to the protection of environmentally critical areas and the shoreline master program for approximately 18 months and over the course of 16 public meetings; and,

WHEREAS, in addition to informal public outreach, consisting of articles on social media, the establishment of a dedicated webpage on "LetsTalk", a formal notice of public hearing was provided in accordance with MICC 19.15.100; and

WHEREAS, the Mercer Island Planning Commission held a public hearing on March 6, 2019 and considered public comment received prior to the close of the public hearing; and

WHEREAS, the Mercer Island Planning Commission unanimously recommended adoption of the proposed amendments to the critical area regulations, shoreline master program, SEPA standards, and related code amendments; and,

WHEREAS, the Mercer Island Comprehensive Plan Shoreline Element goals and policies are implemented through the adoption of the amended Shoreline Master Program; and,

WHEREAS, a SEPA Determination of Non-Significance was issued by the City on February 4, 2019; and,

WHEREAS, the Washington Department of Commerce granted review of the proposed amendments to the development regulations on February 21, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1: **Title 19 MICC Amended.** Title 19 MICC is hereby amended as follows: MICC 19.07.110 is repealed, and a new chapter 19.13 MICC is adopted as set forth in Attachment “A” to this ordinance.

Section 2: **Codification and Effective Date of the Regulations.** The City Council authorizes the Community Planning and Development Director and the City Clerk to correct scrivener’s errors in Attachment A, codify the regulatory provisions of the amendments into title 19 MICC, and publish the amended code. Notwithstanding the effective date of this ordinance set forth in Section 5, the effective date of the regulatory provisions in Section 1 shall be the latter of the effective date set forth in RCW 90.58.090(7) or July 29, 2019.

Section 3: **Interpretation.** The City Council authorizes the Community Planning and Development Director to adopt administrative rules and administer the amended code as necessary to implement the legislative intent of the City Council.

Section 4: **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

Section 5: **Publication and Effective Date.** A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take effect and be in full force five days after the date of publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on June 18, 2019 and signed in authentication of its passage.

CITY OF MERCER ISLAND

Debbie Bertlin, Mayor

APPROVED AS TO FORM:

ATTEST:

Bio F. Park, Interim City Attorney

Deborah A. Estrada, City Clerk

Date of Publication: _____

1 19.~~07.110~~¹³ Shoreline master program.

2 19.13.010 Authority and Purpose

3 19.13.020 General Regulations

4 19.13.030 Shoreline Map and Designations

5 19.13.040 Use Regulations

6 19.13.050 Shoreland Development Standards

7 19.13.010A. Authority and Purpose.

8 A. ~~1~~-Authority. This section is adopted as part of the shoreline master program of the city. It is
9 adopted pursuant to the authority and requirements of Chapter 90.58 RCW and Chapter 173-26
10 WAC.

11 B. ~~2~~-Applicability. The requirements of this section apply to all uses, activities and development within
12 the shorelands, unless specifically exempted by Chapter 90.58 RCW or Chapter 173-27 WAC, or as
13 specified in subsection F), of this section. All proposed uses and development occurring within
14 shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act.

15 C. ~~3~~-Purpose and Intent. It is the purpose and intent of this section to achieve the shoreline master
16 program (SMP) mandates of the state of Washington and to adopt property development standards
17 within the shorelands that protect the health, safety, welfare, values and property interests of the
18 city of Mercer Island and its residents.

19 D. ~~4~~-Relationship with Other Mercer Island Codes and Ordinances. This section is an integrated
20 element of the city of Mercer Island Unified Land Development Code (MICC Title 19) and other
21 applicable development regulations contained in the Mercer Island City Code, including the storm
22 water management regulations in MICC Title 15, and building and construction regulations in MICC
23 Title 17. The provisions of the critical areas ordinance (MICC 19.07.010 through and including
24 19.07.~~190~~, Ordinance 19C-05 as in effect on January 1, 2011) are hereby incorporated as specific
25 regulations of the shoreline master program. To the extent this section conflicts with any other
26 section of the Mercer Island City Code, the provisions of this section shall govern within the
27 shorelands. In general, provisions related to administration and reasonable use do not apply in
28 shoreline jurisdiction. Activities proposed within the shoreline jurisdiction that required a Critical
29 Area Review 1 or 2 should complete these reviews concurrently with the required shoreline permit.

30 1) MICC 19.07.120 Exemptions is excluded from this shoreline master program. Exemptions and
31 exceptions within shoreline jurisdiction are found in WAC 173-27-040, WAC 173-27-044, and
32 WAC 173-27-045.

33 2) MICC 19.07.130 Modifications is excluded from this shoreline master program.

34 3) MICC 19.07.140 Reasonable Use Exception and MICC 19.07.150 Public Agency Exception are
35 excluded from this shoreline master program and shall not apply in shoreline jurisdiction.

36 4) MICC 19.07.180(C)(5) and MICC 19.07.190(C)(6), pertaining to buffer reductions, are excluded
37 from the shoreline master program.

38 5) MICC 19.07.190(D)(1) is excluded from this master program.

39 6) In order to use the wetland buffer table in MICC 19.07.190.C, all of the applicable minimizing
40 measures listed in MICC 19.07.190.D.3 must be implemented. For wetlands with a habitat score
41 of 6 or more, if a protected corridor of relatively undisturbed vegetation exists between the
42 wetland and a nearby Priority Habitat, the portion on the subject property must be protected.

1 [Otherwise the following buffers shall be established from the wetland boundary within](#)
 2 [shoreline jurisdiction:](#)

	Habitat Score		
Wetland Category	3-5	6-7	8-9
Category I	100 ft	150 ft	300 ft
Category II	100 ft	150 ft	300 ft
Category III	100 ft	150 ft	300 ft
Category IV	100 ft	150 ft	300 ft

3
 4 ~~E. 5.~~ Relationship with Other Federal and State Law. The provisions of this section shall not relieve any
 5 responsibility to comply with other federal and state laws or permits. All work at or waterward of
 6 the OHWM may require permits from one or all of the following: U.S. Army Corps of Engineers,
 7 Washington Department of Fish and Wildlife, Washington Department of Natural Resources or
 8 Washington Department of Ecology.

9 ~~F.~~ [The following development is not required to obtain shoreline permits or local reviews:](#)

- 10 [1. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a](#)
 11 [facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D](#)
 12 [RCW, or to the Department of Ecology when it conducts a remedial action under chapter](#)
 13 [70.105D RCW.](#)
- 14 [2. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any](#)
 15 [person installing site improvements for storm water treatment in an existing boatyard facility to](#)
 16 [meet requirements of a national pollutant discharge elimination system storm water general](#)
 17 [permit.](#)
- 18 [3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington](#)
 19 [State Department of Transportation projects and activities meeting the conditions of RCW](#)
 20 [90.58.356 are not required to obtain a substantial development permit, conditional use permit,](#)
 21 [variance, letter of exemption, or other local review.](#)
- 22 [4. Projects consistent with an environmental excellence program agreement pursuant to RCW](#)
 23 [90.58.045.](#)
- 24 ~~1.5.~~ [Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to](#)
 25 [chapter 80.50 RCW.](#)

26 ~~19.13-B.~~ [020](#) General Regulations.

27 A. ~~1.~~ Legal Nonconforming Uses and Structures May Continue. Overwater uses and structures, and
 28 uses and structures 25 feet landward from the OHWM, which were legally created may be
 29 maintained, repaired, renovated, remodeled and completely replaced to the extent that
 30 nonconformance with the standards and regulations of this section is not increased.

31 ~~B.~~ [Expansion of Legal Nonconforming Structures. Expansions of legal nonconforming overwater](#)
 32 [structures and structures upland 25 feet from the OHWM are permitted; provided, that the](#)
 33 [expanded portion of the structure is constructed in compliance with this section and all other](#)
 34 [standards and provisions of the Mercer Island development regulations, including this chapter.](#)

35 ~~B.C.2.~~ No Net Loss Standard and Mitigation Sequencing. No development shall be approved unless the
 36 applicant demonstrates to the code official's satisfaction that the shoreline development will not
 37 create a net loss of ecological function in the shorelands.

1. ~~a.~~ Standards Presumed to Meet No Net Loss. When all individual development standards that apply to a development project do not explicitly require a determination of no net loss and the project conforms with all such standards, there is a rebuttable presumption that the project does not create a net loss of ecological function to the shorelands.
2. ~~b.~~ No Net Loss Plan. Whenever an applicant seeks a variance or conditional use permit or an applicable development standard explicitly requires a determination of no net loss of ecological function, the applicant shall provide the city with a plan that demonstrates the proposed project will not create a net loss in ecological function to the shorelands. The plan shall accomplish no net loss of ecological function by avoiding adverse ecological impacts that are not reasonably necessary to complete the project, minimizing adverse ecological impacts that are reasonably necessary to complete the project, and mitigating or offsetting any adverse impacts to ecological functions or ecosystem-wide processes caused by the project. The code official may require the plan to include reports from qualified professionals with expertise in ecological function. The plan's compliance with the no net loss requirement may be considered through the SEPA process.
 - a) ~~i.~~ Off-Site Mitigation Permitted. While on-site mitigation is preferred, off-site mitigation may be permitted at the discretion of the code official.
 - b) ~~ii.~~ Demonstration of No Net Loss Supported by a Qualified Professional. The code official may require any applicant to provide reports by qualified professionals that demonstrate to the code official's satisfaction that the applicant's proposed plan avoids a net loss in ecological function.

~~C. 3. Expansion of Legal Nonconforming Structures. Expansions of legal nonconforming overwater structures and structures upland 25 feet from the OHWM are permitted; provided, that the expanded structure is constructed in compliance with this section and all other standards and provisions of the Mercer Island development regulations.~~

D. 4. Shoreline Habitat and Natural Enhancements Held Harmless. In those instances where the OHWM moves further landward as a result of any action required by this section, or in accordance with permits involving a shoreline habitat and nature systems enhancement approved by the city, or a state or federal agency, the shoreline setback shall be measured from the location of the OHWM that existed immediately prior to the action or enhancement project.

E. The development of two or more dwelling units on a lot abutting the OHWM should provide joint use or community dock facilities, when feasible, rather than allow individual docks for each lot.

F. New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible. This future shoreline stabilization standard does not apply to stabilization that occurs pursuant to subsection MICC 19.13.050(B)(1). New structural stabilization measures in support of new non-water-dependent development, including single-family residences, shall only be allowed when all of the conditions below apply:

- 1) The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
- 2) Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
- 3) The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report, in compliance with subsection MICC 19.13.050(B)(7). The damage must be caused by natural processes, such as currents and waves.
- 1)4) The erosion control structure will not result in a net loss of shoreline ecological functions.

EXHIBIT A

1 [19.13.030](#) Shoreline Map and Designations. The shoreline environmental designations map, dated
2 March 3, 2011, as shown in Appendix F, is adopted as the official Mercer Island shoreline environmental
3 designations map. The digital map is available in the online version of the Mercer Island City Code at
4 <http://www.mercergov.org>. All shorelands within the city are designated. Different areas of the city's
5 shorelands have different natural characteristics and development patterns. As a result, two shoreline
6 designated environments are established to regulate developments and uses consistent with the specific
7 conditions of the designated environments and to protect resources of the Mercer Island shorelands.
8 They are:

- 9 A) ~~1-~~ Urban Park Environment. This environment consists of shoreland areas designated for public
10 access and active and passive public recreation. The areas include, but are not limited to, parks,
11 street ends, public utilities and other publicly owned rights-of-way. The uses located in this
12 environment should be water-dependent and designed with no net loss to the ecological functions
13 of the shorelands. Restoration of ecological functions is planned for these areas and is strongly
14 encouraged. The preferred and priority use in the urban park environment is public access to, and
15 enjoyment of, Lake Washington.
- 16 B) ~~2-~~ Urban Residential Environment. The purpose of the urban residential environment is to provide
17 for residential and recreational utilization of the shorelands, compatible with the existing residential
18 character in terms of bulk, scale, type of development and no net loss of ecological functions of the
19 shorelands. The preferred and priority use in the urban residential environment is single-family
20 residential use.

21 ~~19.07.110~~[13.040](#) ~~D-~~ Use Regulations. The following tables specify the shoreline uses and developments
22 which may take place or be conducted within the designated environments. The uses and developments
23 listed in the matrix are allowed only if they are not in conflict with more restrictive regulations of the
24 Mercer Island development code and are in compliance with the standards specified in subsection E of
25 this section.

KEY:

CE: Permitted via shoreline categorically exempt

P: Permitted use

P-1: Uses permitted when authorized by a conditional use permit for the applicable zone shall also
require a shoreline substantial development permit and a shoreline plan in compliance with MICC
~~19.07.110(B)(2)~~[13.020\(C\)](#)

SCUP: Shoreline conditional use permit

NP: Not a permitted use

26 The following regulations apply to all uses and development within the shorelands, whether or not that
27 development is exempt from the permit requirements:

EXHIBIT A

Table A – Shoreland Uses Landward of the Ordinary High Water Mark

SHORELAND USE LANDWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Single-family dwelling including accessory uses and accessory structures	CE	NP
Accessory dwelling units	CE	NP
The use of a single-family dwelling as a bed and breakfast	P-1	NP
A state-licensed day care or preschool	P-1	NP
Government services, public facilities, and museums and art exhibitions	P-1	P
Public parks and open space	P	P
Private recreational areas	P	NP
Semi-private waterfront recreation areas for use by 10 or fewer families	P	NP
Semi-private waterfront recreation areas for use by more than 10 families	P-1	NP
Noncommercial recreational areas	P-1	P
Commercial recreational areas	NP	NP
Places of worship	P-1	NP
Retirement homes located on property used primarily for a place of worship	P-1	NP
Special needs group housing	P	NP
Social service transitional housing	P	NP
Public schools accredited or approved by the state for compulsory school attendance	NP	NP
Private schools accredited or approved by the state for compulsory school attendance	NP	NP

EXHIBIT A

Table A – Shoreland Uses Landward of the Ordinary High Water Mark

SHORELAND USE LANDWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Streets and parking	P	P
Transit facilities including light rail transit facilities, transit stops, and associated parking lots	P	NP
Wireless communications facilities	P	P
New hard structural shoreline stabilization	SCUP	SCUP
Soft structural shoreline stabilization	P	P
Shoreland surface modification	P	P
Restoration of ecological functions including shoreline habitat and natural systems enhancement	P	P
Boat ramp	P	P
Agriculture, aquaculture, forest practices and mining	NP	NP

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Table B – Shoreland Uses Waterward of the Ordinary High Water Mark

SHORELAND USE WATERWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Moorage facilities and covered moorages 600 square feet or less	P	P
Covered moorage larger than 600 square feet	SCUP	SCUP
Floating platforms	P	P
Mooring piles, diving boards and diving platforms	P	P
Boat ramp	P	P
Boat houses	NP	NP

EXHIBIT A

Table B – Shoreland Uses Waterward of the Ordinary High Water Mark

SHORELAND USE WATERWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Floating homes	NP	NP
Public access pier, dock , or boardwalk	P	P
Utilities	P	P
Public transportation facilities including roads, bridges, and transit	P	P
Transit facilities including light rail transit facilities	P	NP
Dredging and dredge material disposal	P	P
Breakwaters, jetties, and groins (except those for restoration of ecological functions)	NP	NP
Restoration of ecological functions including shoreline habitat and natural systems enhancement	P	P
<p>Notes:</p> <p>A use not listed in this table is not permitted within shorelands.</p> <p>A use permitted by this table shall meet all other applicable regulations, including, but not limited to, being an allowed use in the applicable zone.</p>		

1 [19.07.11013.050.E](#)-Shoreland Development Standards. All development within the shoreline
 2 jurisdiction shall be in compliance with all development requirements specified in this section.

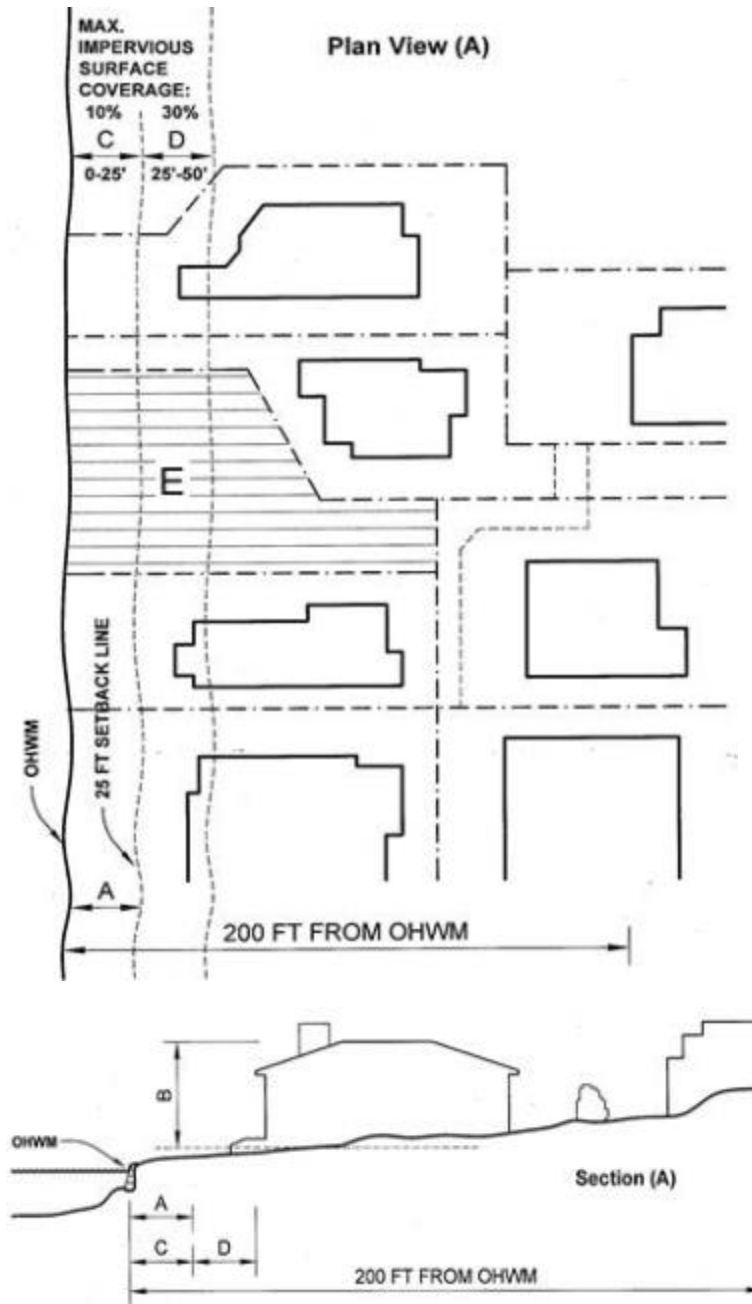
3 A. ~~1-~~Standards Landward of the **OHWM**. The standards in Table C shall apply to development
 4 located landward of the OHWM:

Table C. Requirements for Development Located Landward from the OHWM

Setbacks for All Structures (Including Fences over 48 Inches High) and Parking	A*	25 feet from the OHWM and all required setbacks of the development code, except 1) light rail transit facilities and 2) shore access structures less than 30 inches above the existing or finished grade, whichever is lower . If a wetland is adjacent to the shoreline, measure the shoreline setback from the wetland’s boundary
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EXHIBIT A

Height Limits for All Structures	B	Shall be the same as height limits specified in the development code but shall not exceed a height of 35 feet above average building elevation, except light rail transit facilities
Maximum Impervious Surface <u>Hardscape and Lot Coverage</u>	C D	10%: between 0 and 25 feet from OHWM 30%: between 25 and 50 feet from OHWM
Minimum Land Area Requirements	E	All semi-private, commercial and noncommercial recreational tracts and areas shall have minimum land area: 200 square feet per family, but not less than 600 square feet, exclusive of driveways or parking areas. Screening of the boundaries with abutting properties
Shoreland Surface Modification	-	Alterations over 250 cubic yards – outside the building footprint requires SEPA
Height Limits for Light Rail Transit Facilities within the Existing I-90 Corridor		The trackway and overhead wires, support poles, and similar features necessary to operate light rail transit facilities may be erected upon and exceed the height of the existing I-90 bridges
*The letters in this column refer to the Plan View (A) and Section (A) diagrams.		



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B. ~~2-~~ Bulkheads and Shoreline Stabilization Structures.

1. ~~a-~~ An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves, and the following conditions shall apply:

a) ~~i-~~ The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.

b) ~~ii-~~ Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the primary structure was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. Soft shoreline

1 stabilization measures that provide restoration of shoreline ecological functions may be
2 permitted waterward of the ordinary high water mark.

- 3 c) ~~iii~~-For purposes of this section standards on shoreline stabilization measures,
4 “replacement” means the construction of a new structure to perform a shoreline
5 stabilization function of an existing structure which can no longer adequately serve its
6 purpose. Additions to or increases in size of existing shoreline stabilization measures shall be
7 considered new structures.
- 8 d) ~~iv~~-Construction and maintenance of normal protective bulkhead common to single-family
9 dwellings requires only a shoreline exemption permit, unless a report is required by the
10 code official to ensure compliance with the above conditions; however, if the construction
11 of the bulkhead is undertaken wholly or in part on lands covered by water, such
12 construction shall comply with SEPA mitigation.

13 ~~2. b.~~ New Structures for Existing Primary Structures. New or enlarged structural shoreline
14 stabilization measures for an existing primary structure, including residences, are not allowed
15 unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is
16 in danger from shoreline erosion caused by currents, or waves. Normal sloughing, erosion of
17 steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not
18 demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and
19 address drainage problems away from the shoreline edge before considering structural
20 shoreline stabilization. New or enlarged erosion control structure shall not result in a net loss of
21 shoreline ecological functions.

22 ~~3. c. New development should be located and designed to avoid the need for future shoreline
23 stabilization to the extent feasible. This future shoreline stabilization standard does not apply to
24 stabilization that occurs pursuant to subsection (E)(2)(a) of this section. New structural
25 stabilization measures in support of new non-water dependent development, including single-
26 family residences, shall only be allowed when all of the conditions below apply:~~

27 ~~4. i. The erosion is not being caused by upland conditions, such as the loss of vegetation and
28 drainage.~~

29 ~~5. ii. Nonstructural measures, such as placing the development further from the shoreline, planting
30 vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.~~

31 ~~6. iii. The need to protect primary structures from damage due to erosion is demonstrated through
32 a geotechnical report, in compliance with subsection (E)(2)(h) of this section. The damage must
33 be caused by natural processes, such as currents and waves.~~

34 ~~7.2. iv. The erosion control structure will not result in a net loss of shoreline ecological functions.~~

35 ~~8.3. d.~~ New development on steep slopes or bluffs shall be set back sufficiently to ensure that
36 shoreline stabilization is unlikely to be necessary during the life of the structure, as
37 demonstrated by a geotechnical analysis, in compliance with subsection ~~(E)(2)(h)~~[\(B\)\(7\)](#) of this
38 section and building and construction codes.

39 ~~9.4.~~ New structural stabilization measures in support of water-dependent development shall only be
40 allowed when all of the conditions below apply:

41 a) ~~i~~-The erosion is not being caused by upland conditions, such as the loss of vegetation and
42 drainage.

43 b) ~~ii~~-Nonstructural measures, planting vegetation, or installing on-site drainage improvements,
44 are not feasible or not sufficient.

- 1 c) ~~iii~~-The need to protect primary structures from damage due to erosion is demonstrated
 2 through a geotechnical report, in compliance with subsection ~~(E)(2)(h)~~(B)(7) of this section
 3 and building and construction codes.
- 4 d) ~~iv~~-The erosion control structure will not result in a net loss of shoreline ecological functions.
- 5 ~~10~~.5. ~~f~~-New structural stabilization measures to protect projects for the restoration of
 6 ecological functions or hazardous substance remediation projects pursuant to Chapter 70.105D
 7 RCW shall only be allowed when all of the conditions below apply:
- 8 a) ~~i~~-Nonstructural measures, planting vegetation, or installing on-site drainage improvements,
 9 are not feasible or not sufficient.
- 10 b) ~~ii~~-The erosion control structure will not result in a net loss of shoreline ecological functions.
- 11 ~~11~~.6. ~~g~~-Bulkheads shall be located generally parallel to the natural shoreline. No filling may
 12 be allowed waterward of the ordinary high water mark, unless there has been severe and
 13 unusual erosion within two years immediately preceding the application for the bulkhead. In
 14 this event the city may allow the placement of the bulkhead to recover the dry land area lost by
 15 erosion.
- 16 ~~12~~.7. ~~h~~-Geotechnical reports pursuant to this section that address the need to prevent
 17 potential damage to a primary structure shall address the necessity for shoreline stabilization by
 18 estimating time frames and rates of erosion and report on the urgency associated with the
 19 specific situation. As a general matter, hard armoring solutions should not be authorized except
 20 when a report confirms that there is a significant possibility that such a structure will be
 21 damaged within three years as a result of shoreline erosion in the absence of such hard
 22 armoring measures, or where waiting until the need is that immediate would foreclose the
 23 opportunity to use measures that avoid impacts on ecological functions. Thus, where the
 24 geotechnical report confirms a need to prevent potential damage to a primary structure, but the
 25 need is not as immediate as the three years, that report may still be used to justify more
 26 immediate authorization to protect against erosion using soft measures.
- 27 ~~13~~.8. ~~i~~-When any structural shoreline stabilization measures are demonstrated to be
 28 necessary, pursuant to above provisions, the following shall apply:
- 29 a) ~~i~~-Limit the size of stabilization measures to the minimum necessary. Use measures designed
 30 to assure no net loss of shoreline ecological functions. Soft approaches shall be used unless
 31 demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.
- 32 b) ~~ii~~-Ensure that publicly financed or subsidized shoreline erosion control measures do not
 33 permanently restrict appropriate public access to the shoreline except where such access is
 34 determined to be infeasible because of incompatible uses, safety, security, or harm to
 35 ecological functions. See public access provisions: WAC 173-26-221(4). Where feasible,
 36 incorporate ecological restoration and public access improvements into the project.
- 37 c) ~~iii~~-Mitigate new erosion control measures, including replacement structures, on feeder
 38 bluffs or other actions that affect beach sediment-producing areas to avoid and, if that is not
 39 possible, to minimize adverse impacts to sediment conveyance systems. Where sediment
 40 conveyance systems cross jurisdictional boundaries, local governments should coordinate
 41 shoreline management efforts. If beach erosion is threatening existing development, local
 42 governments should adopt master program provisions for a beach management district or
 43 other institutional mechanism to provide comprehensive mitigation for the adverse impacts
 44 of erosion control measures.

~~14. j. The development of two or more dwelling units on a lot abutting the OHWM should provide joint use or community dock facilities, when feasible, rather than allow individual docks for each lot.~~

C. ~~3.~~ Transportation and Parking.

1. ~~a.~~ Shoreline circulation system planning shall include safe, reasonable, and adequate systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with all regulations.
2. ~~b.~~ Transportation and parking facilities shall be planned, located, and designed where routes will have the least possible adverse effect on unique or fragile shoreline features, and will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.
3. ~~c.~~ Where other options are available and feasible, new roads or road expansions should not be built within shorelands.
4. ~~d.~~ Parking facilities in shorelands shall be allowed only as necessary to support an authorized use.

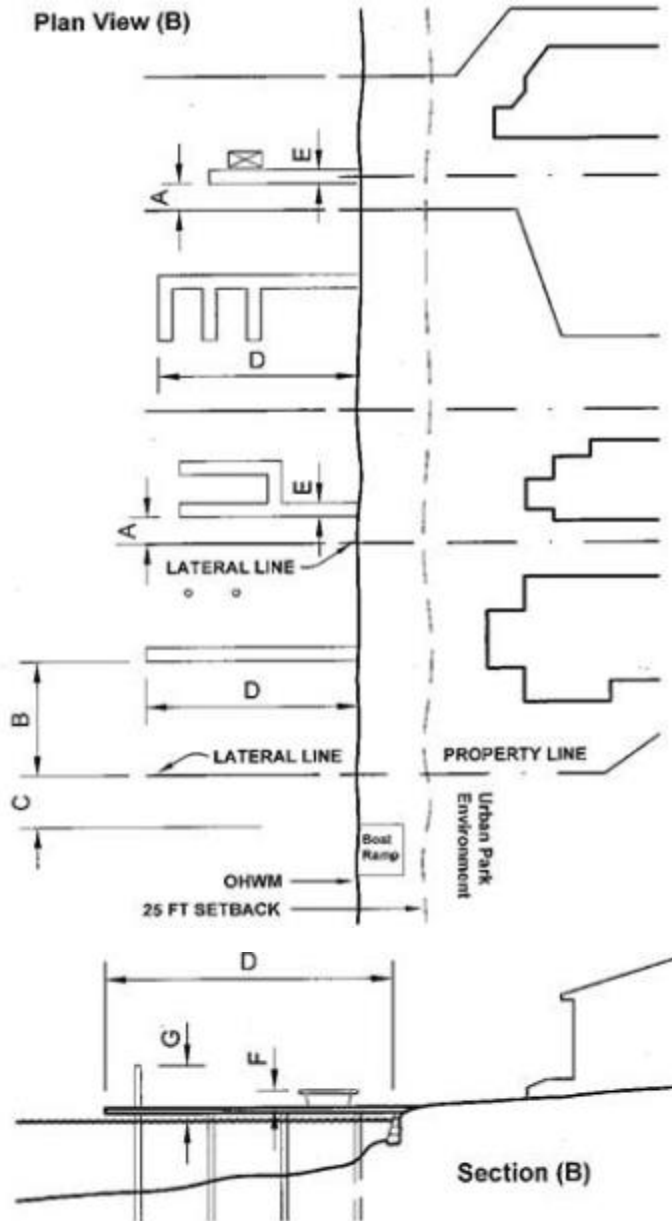
D. ~~4.~~ Standards Waterward of the OHWM. Moorage facilities may be developed and used as an accessory to dwellings on shoreline lots. Only one noncommercial, residential moorage facility per upland residential waterfront lot authorized. The standards in Table D shall apply to development located waterward of the OHWM:

Table D. Requirements for Moorage Facilities and Development Located Waterward from the OHWM

Setbacks for All Moorage Facilities Docks, Covered Moorage, and Floating Platforms	A*	10 feet from the lateral line (except where moorage facility is built pursuant to the agreement between adjoining the owners of adjoining lots on the shoreline as shown in Figure B below).
	B	Where a property shares a common boundary with the urban park environment, the setback shall be 50 feet from the lateral line or 50% of the water frontage of the property, whichever is less.
Setbacks for Boat Ramps and Other Facilities for Launching Boats by Auto or Hand, Including Parking and Maneuvering Space	C	25 feet from any adjacent private property line.
Length or Maximum Distance Waterward from the OHWM for Moorage Facilities Docks, Covered Moorage, Boatlifts and Floating Platforms	D	Maximum 100 feet, but in cases where water depth is less than 11.85 feet below OHWM, length may extend up to 150 feet or to the point where water depth is 11.85 feet at OHWM, whichever is less.

EXHIBIT A

<p>Width of moorage facilities<u>docks</u> within 30 feet waterward from the OHWM</p>	<p>E</p>	<p>Maximum 4 feet. Width may increase to 5 feet if one of the following is met:</p> <ol style="list-style-type: none"> 1) Water depth is 4.85 feet or more, as measured from the OHWM; or 2) A moorage facility is required to comply with Americans with Disabilities Act (ADA) requirements; or 3) A resident of the property has a documented permanent state disability as defined in WAC 308-96B-010(5); or 4) The proposed project includes mitigation option A, B or C listed in Table E; and for replacement actions, there is either a net reduction in overwater coverage within 30 feet waterward from the OHWM, or a site-specific report is prepared by a qualified professional demonstrating no net loss of ecological function of the shorelands. <p>Moorage facility width shall not include pilings, boat ramps and lift stations<u>boatlifts</u>.</p>
<p>Width of moorage facilities more than 30 feet waterward from the OHWM</p>	<p>E</p>	<p>Maximum 6 feet wide. Moorage facility width shall not include pilings, boat ramps and <u>boatlifts</u>lift stations.</p>
<p>Height Limits for Walls, Handrails and Storage Containers Located on Piers</p>	<p>F</p>	<p>3.5 feet above the surface of a dock or pier. 4 feet for ramps and gangways designed to span the area 0 feet to 30 feet from the OHWM.</p>
<p>Height Limits for Mooring Piles, Diving Boards and Diving Platforms</p>	<p>G</p>	<p>10 feet above the elevation of the OHWM.</p>
<p>Height Limits for Light Rail Transit Facilities within the Existing I-90 Corridor</p>		<p>The trackway and overhead wires, support poles, and similar features necessary to operate light rail transit facilities may be erected upon and exceed the height of the existing I-90 bridges.</p>
<p>*The letters in this column refer to the Plan View (B) and Section (B) diagrams.</p>		



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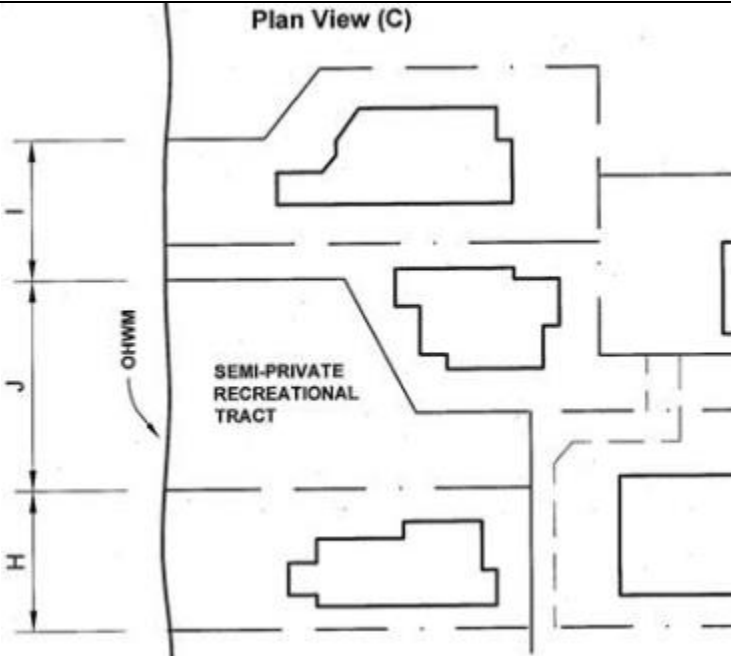
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Table D. Requirements for Moorage Facilities and Development Located Waterward from the OHWM (Continued)

Minimum Water Frontage for Docks Moorage Facility	H*	Single-family lots: 40 feet.
	I	Shared – two adjoining lots <u>on the shoreline</u> : 40 feet combined.
	J	Semi-private recreational tracts: 2 families: 40 feet.

EXHIBIT A

	<p>3 – 5 families: 40 feet plus 10 feet for each family more than 2.</p> <p>6 – 10 families: 70 feet plus 5 feet for each family more than 5.</p> <p>11 – 100 families: 95 feet plus 2 feet for each family more than 10.</p> <p>101+ families: 275 feet plus 1 foot for each family more than 100.</p>
Covered Moorage	<p>Permitted on single-family residential lots subject to the following:</p> <p>(a) Maximum height above the OHWM: 16 feet; 16 to 21 feet subject to criteria of MICC 19.07.110(E)(5)(a) 13.050(E)(1).</p> <p>(b) Location/area requirements: See Figure A for single-family lots and Figure B for shared moorage.</p> <p>(c) Building area: 600 square feet; however, a covered moorage may be built larger than 600 square feet within the triangle subject to a shoreline conditional use permit.</p> <p>(d) Covered moorage shall have open sides.</p> <p>(e) Prohibited in semi-private recreational tracts and noncommercial recreational areas.</p> <p>(f) Translucent canopies coverings are required.</p>
<p>*The letters in this column refer to the Plan View (C).</p>	



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EXHIBIT A

Table E. Dock Width Mitigation Options

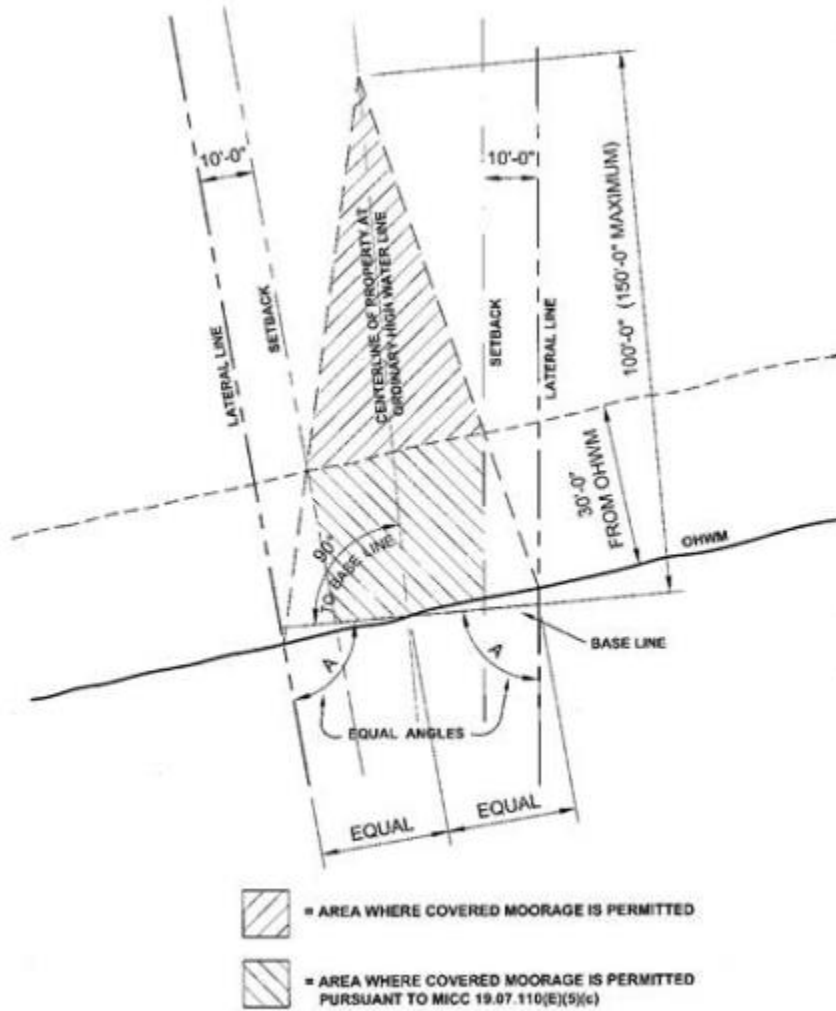
Option A	Option B	Option C
Includes at Least One of the Following:	Includes at Least Two of the Following:	Includes at Least Three of the Following:
1. Complete removal of existing bulkhead with shoreline restoration	1. Removal of 12 feet or 30% (lineal), whichever is greater, of existing bulkhead and creation of beach cove with shoreline restoration	1. Installation/Replacement of decking within the first 30 feet waterward from the OHWM that allows a minimum of 60% light transmittance.
2. Removal of an existing legally established boat house (A "boat house" is a covered moorage that includes walls and a roof to protect the vessel.)	2. Installation/Replacement of decking within the first 30 feet waterward from the OHWM that allows a minimum of 60% light transmittance.	2. Removal of all existing legally established piling treated with creosote or comparably toxic compounds
3. Replacement of two or more existing legally established individual moorage facilities docks with a single joint use moorage facility	3. Removal of an existing legally established covered moorage within the first 30 feet waterward from the OHWM	3. At least a 10% net reduction of existing legally established overwater coverage within the first 30 feet waterward from OHWM
		4. Removal of all legally established individual mooring piles within the first 30 feet waterward from the OHWM
		5. Removal of an existing legally established covered moorage within the first 30 feet waterward from the OHWM

1 E. ~~5-~~The covered portion of a moorage shall be restricted to the area lying within a triangle as
 2 illustrated in Figure A, except as otherwise provided in subsection ~~(E)(5)(a)~~(E)(1) of this section. The
 3 base of the triangle shall be a line drawn between the points of intersection of the property lateral
 4 lines with the ordinary high water mark. The location of the covered moorage shall not extend more
 5 than 100 feet from the center of the base line of such triangle. In cases where water depth is less
 6 than 11.85 feet from OHWM, the location of the covered moorage may extend up to 150 feet from
 7 the center of the base line or to the point where water depth is 11.85 feet at OHWM, whichever is

less. The required 10-foot setbacks from the side property lines shall be deducted from the triangle area.

1. ~~a.~~ A covered moorage is allowed outside the triangle, or a canopy up to 21 feet in height, if the covered moorage meets all other regulations and:
 - a) ~~i.~~ Will not constitute a hazard to the public health, welfare, and safety, or be injurious to affected shoreline properties in the vicinity;
 - b) ~~ii.~~ Will constitute a lower impact for abutting property owners; and
 - c) ~~iii.~~ Is not in conflict with the general intent and purpose of the SMA, the shoreline master program and the development code.

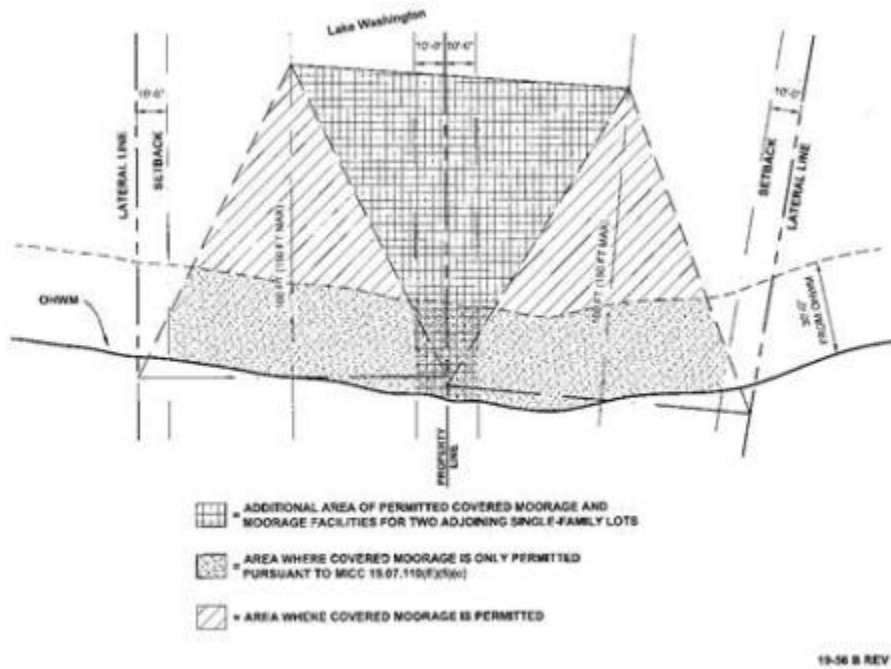
Figure A: Area of Permitted Covered Moorage, Individual Lots



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2. ~~b.~~ Where a covered moorage or moorage facility is built pursuant to the agreement of adjoining owners of adjoining single-family lots located on the shoreline, the covered moorage area shall be deemed to include, subject to limitations of such joint agreement, all of the combined areas lying within the triangles extended upon each adjoining property and the inverted triangle situated between the aforesaid triangles, as illustrated in Figure B below.

1 Figure B: Area of Permitted Covered Moorage and Moorage Facilities, Two Adjoining Single-Family Lots



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- 3 3. ~~e~~-Covered moorage is not allowed within the first 30 feet from the OHWM unless the applicant:
- 4 a) ~~i~~-Demonstrates to the code official's satisfaction that proposed project will not create a net
- 5 loss in ecological function of the shorelands; and
- 6 b) ~~ii~~-Provides the city with documentation of approval of the moorage facilities by both the
- 7 U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife.

8 F. ~~6~~-Moorage Facilities. All permits for new and expanded moorage facility, other than public access

9 piers or boardwalks, shall meet the following standards unless otherwise exempted. Moorage

10 facilities have the option of meeting either the development standards prescribed in subsections

11 ~~(E)(6)(a)(F)(1)~~ or ~~(2b)~~ of this section, or the "alternative development standards" in subsection

12 ~~(E)(6)(cF)(3)~~ of this section.

- 13 1. ~~a~~-Development Standards for New and Expanded Moorage Facilities. A proposed moorage
- 14 facility shall be presumed to not create a net loss of ecological functions pursuant to subsection
- 15 (B)(2) of this section if:
- 16 a) ~~i~~-The surface coverage area of the moorage facility is:
- 17 (1) ~~(A)~~-Four hundred eighty square feet or less for a single property owner;
- 18 (2) ~~(B)~~-Seven hundred square feet or less for two residential property owners (residential);
- 19 or
- 20 (3) ~~(C)~~-One thousand square feet or less for three or more residential property owners;
- 21 b) ~~ii~~-Piers, docks, and platform lifts must be fully grated with materials that allow a minimum
- 22 of 40 percent light transmittance;
- 23 c) ~~iii~~-Vegetation. The code official approves a vegetation plan that conforms to the following:

24 Vegetation must be planted as provided in Figure C and as follows: Within the 25-foot shoreline

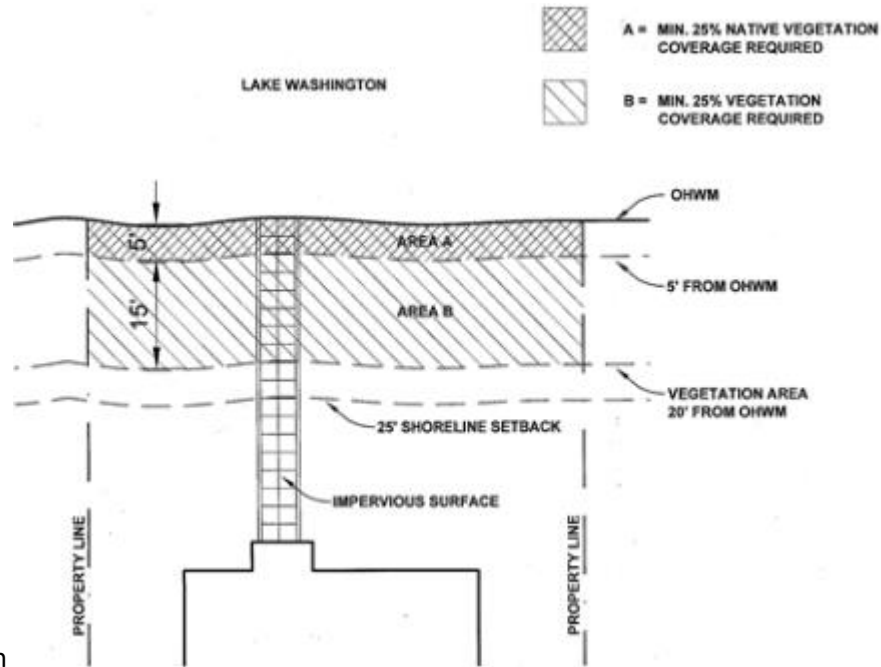
25 setback, a 20-foot vegetation area shall be established, measured landward from the OHWM.

26 Twenty-five percent of the area shall contain vegetation coverage. The five feet nearest the

27 OHWM shall contain at least 25 percent native vegetation coverage. A shoreline vegetation plan

EXHIBIT A

1 shall be submitted to the city for approval. The vegetation coverage shall consist of a variety of
 2 ground cover shrubs and trees, excluding nonnative grasses. No plants on the current King
 3 County noxious weed lists shall be planted within the shorelands.



4 Figure C: Vegetation Plan

- 5 d) ~~iv.~~ Only piersdocks, ramps, and lift stationsboatlifts may be within the first 30 feet from the
- 6 OHWM. No skirting is allowed on any structure;
- 7 e) ~~v.~~ The height above the OHWM for moorage facilitiesdocks, ~~except floats~~, shall be a
- 8 minimum of one and one-half feet and a maximum of five feet;
- 9 f) ~~vi.~~ The first in-water (nearest the OHWMOHWM) set of pilings shall be steel, 10 inches in
- 10 diameter or less, and at least 18 feet from the OHWM. Piling sets beyond the first shall also
- 11 be spaced at least 18 feet apart and shall not be greater than 12 inches in diameter. Piles
- 12 shall not be treated with pentachlorophenol, creosote, CCA or comparably toxic
- 13 compounds. If ammoniacal copper zinc arsenate (ACZA) pilings are proposed, the applicant
- 14 shall meet all of the best management practices, including a post-treatment procedure, as
- 15 outlined in the amended Best Management Practices of the Western Wood Preservers. All
- 16 piling sizes are in nominal diameter;
- 17 g) ~~vii.~~ Any paint, stain or preservative applied to components of the overwater structuredock
- 18 must be leach resistant, completely dried or cured prior to installation. Materials shall not
- 19 be treated with pentochlorophenol, creosote, CCA or comparably toxic compounds;
- 20 h) ~~viii.~~ No more than two mooring piles shall be installed per structure. Joint-use structures
- 21 may have up to four mooring piles. The limits include existing mooring piles. Moorage piling
- 22 shall not be installed within 30 feet of the OHWM. These piles shall be as far offshore as
- 23 possible;
- 24 i) ~~ix.~~ The applicant shall abide by the work windows for listed species established by the U.S.
- 25 Army Corps of Engineers and Washington Fish and Wildlife; and
- 26 j) ~~x.~~ Disturbance of bank vegetation shall be limited to the minimum amount necessary to
- 27 accomplish the project. Disturbed bank vegetation shall be replaced with native, locally

- 1 adapted herbaceous and/or woody vegetation. Herbaceous plantings shall occur within 48
 2 hours of the completion of construction. Woody vegetation components shall be planted in
 3 the fall or early winter, whichever occurs first. The applicant shall take appropriate
 4 measures to ensure revegetation success.
- 5 2. ~~b.~~ Development Standards for Replacement, Repair and Maintenance of Overwater Structures,
 6 Including Moorage Facilities. The maintenance, repair and complete replacement of legally
 7 existing overwater structures is permitted; provided, that:
- 8 a) ~~i.~~ All permit requirements of federal and state agencies are met;
 9 b) ~~ii.~~ The area, width, or length of the structure is not increased, but may be decreased;
 10 c) ~~iii.~~ The height of any structure is not increased, but may be decreased; provided, that the
 11 height above the OHWM may be increased as provided in subsection (~~E)(6)(b)(ix)~~(~~B~~F)(2)(i)(2)
 12 of this section;
 13 d) ~~iv.~~ The location of any structure is not changed unless the applicant demonstrates to the
 14 director's satisfaction that the proposed change in location results in: (A) a net gain in
 15 ecological function, and (B) a higher degree of conformity with the location standards for a
 16 new overwater structure;
 17 e) ~~v.~~ Piles shall not be treated with pentachlorophenol, creosote, CCA or comparably toxic
 18 compounds. If ammoniacal copper zinc arsenate (ACZA) pilings are proposed, the applicant
 19 shall meet all of the best management practices, including a post-treatment procedure, as
 20 outlined in the amended Best Management Practices of the Western Wood Preservers. All
 21 piling sizes are in nominal diameter;
 22 f) ~~vi.~~ Any paint, stain or preservative applied to components of the overwater structure must
 23 be leach resistant, completely dried or cured prior to installation. Materials shall not be
 24 treated with pentochlorophenol, creosote, CCA or comparably toxic compounds;
 25 g) ~~vii.~~ The applicant shall abide by the work windows for listed species established by the U.S.
 26 Army Corps of Engineers and Washington Fish and Wildlife;
 27 h) ~~viii.~~ Disturbance of bank vegetation shall be limited to the minimum amount necessary to
 28 accomplish the project. Disturbed bank vegetation shall be replaced with native, locally
 29 adapted herbaceous and/or woody vegetation. Herbaceous plantings shall occur within 48
 30 hours of the completion of construction. Woody vegetation components shall be planted in
 31 the fall or early winter, whichever occurs first. The applicant shall take appropriate
 32 measures to ensure revegetation success; and
- 33 i) ~~ix.~~ If the repair, replacement, or reconstruction of moorage facilities that results in the
 34 repair, replacement, or reconstruction of more than 50 percent of the structure's exterior
 35 surface (including decking), or the structure's structural elements (including pilings) within a
 36 five year period shall comply with the following standards: are replaced or reconstructed
 37 during the five years immediately prior to any demolition for the replacement or
 38 reconstruction, the replaced or reconstructed area of the structure must also comply with
 39 the following standards:
- 40 (1) ~~(A)~~ Piers, docks, and platform lifts must be fully grated with materials that allow a
 41 minimum of 40 percent light transmittance;
 42 (2) ~~(B)~~ The height above the OHWM for moorage facilities, except floats, shall be a
 43 minimum of one and one-half feet and a maximum of five feet; and
 44 (3) ~~(C)~~ An existing moorage facility that is five feet wide or more within 30 feet waterward
 45 from the OHWM shall be replaced or repaired with a moorage facility that complies with

the width of moorage facilities standards specified in ~~subsection (E)(4) of this section (Table D) of section 19.13.050.~~

- ~~i) The repair, replacement, or reconstruction of moorage facilities that results in the repair, replacement, or reconstruction of more than 20 percent of the structure’s exterior surface (including decking) within a five year period shall comply with the following standards:~~
 - ~~(1) Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance.~~

- 3. ~~e-~~Alternative Development Standards. The code official shall approve moorage facilities not in compliance with the development standards in subsection ~~(E)(6)(aF)(1) or (b2)~~ of this section subject to both U.S. Army Corps of Engineers and Washington Department of Fish and Wildlife approval to an alternate project design. The following requirements and all other applicable provisions in this chapter shall be met:
 - a) ~~i-~~The dock must be no larger than authorized through state and federal approval;
 - b) ~~ii-~~The maximum width must comply with the width of moorage facilities standards specified in subsection (E)(4) of this section (Table D);
 - c) ~~iii-~~The minimum water depth must be no shallower than authorized through state and federal approval;
 - d) ~~iv-~~The applicant must demonstrate to the code official’s satisfaction that the proposed project will not create a net loss in ecological function of the shorelands; and
 - e) ~~v-~~The applicant must provide the city with documentation of approval of the moorage facilities by both the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife.

~~G. 7-~~Breakwaters, jetties, groins, and weirs. Breakwaters, jetties, groins, weirs, and similar structures are prohibited, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams. Breakwaters, jetties, groins, and weirs shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in WAC 173-26-201(2)(e).

~~H. Public Access Piers, Docks, or Boardwalk. New public access piers, docks, or boardwalks on public lands shall comply with the following:~~

- ~~1. Public access piers, docks, or boardwalks shall be designed and constructed using WDFW-approved methods and materials;~~
- ~~2. With the exception of the requirements for moorage facilities related to width and length, public access piers, docks, or boardwalks shall comply with design standards required for moorage facilities listed in Table D. Requirements for Moorage Facilities and Development Located Waterward from OHWM;~~
- ~~3. There is no dock length or area limit for public access piers, docks, or boardwalks; however, public access piers, docks, and boardwalks shall not interfere with navigation and shall be the minimum size necessary to meet the needs of the proposed water-dependent use;~~
- ~~4. Public access piers, docks, or boardwalks may have a width of up to six feet in width subject to Army Corps of Engineers and/or Washington Department of Fish and Wildlife approval;~~
- ~~5. Public access piers, docks, or boardwalks must be fully grated with materials that allow a minimum of 40 percent light transmittance;~~
- ~~6. Minimum of one and one-half feet above ordinary high water to bottom of pier stringer, except the floating section of a dock attached to a pier;~~

1 7. The first in-water (nearest the ~~OHWM~~^{OHW}) set of pilings shall be steel, 10 inches in diameter
 2 or less, and at least 18 feet from the OHWM. Piling sets beyond the first shall also be spaced at
 3 least 18 feet apart and shall not be greater than 12 inches in diameter. Piles shall not be treated
 4 with pentachlorophenol, creosote, CCA or comparably toxic compounds. If ammoniacal copper
 5 zinc arsenate (ACZA) pilings are proposed, the applicant shall meet all of the best management
 6 practices, including a post-treatment procedure, as outlined in the amended Best Management
 7 Practices of the Western Wood Preservers. All piling sizes are in nominal diameter;

8 8. Any paint, stain or preservative applied to components of the overwater structure must be leach
 9 resistant, completely dried or cured prior to installation. Materials shall not be treated with
 10 pentochlorophenol, creosote, CCA or comparably toxic compounds;

11 9. Disturbance of bank vegetation shall be limited to the minimum amount necessary to
 12 accomplish the project. Disturbed bank vegetation shall be replaced with native, locally adapted
 13 herbaceous and/or woody vegetation;

14 10. Construction of public access piers, docks, or boardwalks shall abide by the work windows for
 15 listed species established by the U.S. Army Corps of Engineers and Washington Fish and Wildlife;
 16 and,

17 4.11. A no net loss plan shall be prepared pursuant to Section 19.13.020 MICC demonstrating
 18 that the proposed project will not create a net loss in ecological function of the shorelands.

19 G.I. Restoration of ecological functions. The code official may grant relief from shoreline master
 20 program development standards and use regulations resulting from shoreline restoration projects
 21 consistent with the criteria and procedures in WAC 173-27-215.

22 H.J. 8-Dredging.

23 1. ~~a-~~Dredging shall be permitted only if navigational access has been unduly restricted or other
 24 extraordinary conditions in conjunction with water-dependent use; provided, that the use
 25 meets all state and federal regulations.

26 2. ~~b-~~Dredging shall be the minimum necessary to accommodate the proposed use.

27 3. ~~c-~~Dredging shall utilize techniques that cause the least possible environmental and aesthetic
 28 impact.

29 4. ~~d-~~Dredging is prohibited in the following locations:

30 a) ~~i-~~Fish spawning areas except when the applicant conclusively demonstrated that fish
 31 habitat will be significantly improved as a result of the project.

32 b) ~~ii-~~In unique environments such as lake logging of the underwater forest.

33 5. ~~e-~~Dredging and the disposal of dredged material shall comply with Ecology water quality
 34 certification process and U.S. Army Corps of Engineers permit requirements. The location and
 35 manner of the disposal shall be approved by the city.

36 I.K. 9-General Requirements. The following requirements apply to the following types of activities that
 37 may be waterward and/or landward of the OHWM:

38 1. ~~a-~~Critical Areas within the shorelands are regulated by MICC 19.07.010 through and including
 39 19.07.090, as adopted in the MICC on January 1, 2011, except: MICC 19.07.030(B), Reasonable
 40 Use Exception, and 19.07.040(C), Setback Deviation, and (D), Variances.

41 2. ~~b-~~Utilities.

42 a) ~~i-~~Utilities shall be placed underground and in common rights-of-way wherever economically
 43 and technically practical.

44 b) ~~ii-~~Shoreline public access shall be encouraged on publicly owned utility rights-of-way, when
 45 such access will not unduly interfere with utility operations or endanger public health and

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- safety. Utility easements on private property will not be used for public access, unless otherwise provided for in such easement.
- c) ~~iii~~-Restoration of the site is required upon completion of utility installation.
3. ~~c~~-Archaeological and Historic Resources.
- a) ~~i~~-If archaeological resources are uncovered during excavation, the developer and property owner shall immediately stop work and notify the city, the Office of Archaeology and Historic Preservation, and affected Indian tribes.
 - b) ~~ii~~-In areas documented to contain archaeological resources by the Office of Archaeology and Historic Preservation, a site inspection or evaluation is required by a professional archaeologist in coordination with affected Indian tribes.
4. ~~d~~-New development ~~adding over~~totaling 500 square feet or more of any combination of additional gross floor area, lot coverage or hardscape or impervious surface, including the primary structures and appurtenances, shall be required to provide native vegetation coverage over 50 percent of the 20-foot vegetation area shown on Figure C. This ~~standard total~~ shall ~~apply to the total of~~ include all new-gross floor area, lot coverage, and hardscape impervious surface area added in the five years immediately prior to the ~~construction of the gross floor area or impervious surface addition~~development proposal.
- a) ~~i~~-New development ~~over~~totaling 1,000 square feet or more of any combination of additional gross floor area, lot coverage or hardscape or impervious surface, including the primary structures and appurtenances, shall be required to provide native vegetation coverage over 75 percent of the 20-foot vegetation area shown in Figure C.
 - b) ~~ii~~-A shoreline vegetation plan shall be submitted to the city for approval.
 - c) ~~iii~~-The vegetation coverage shall consist of a variety of ground cover shrubs and trees indigenous to the central Puget Sound lowland ecoregion and suitable to the specific site conditions. Existing mature trees and shrubs, but excluding noxious weeds, may be included in the coverage requirement if located in the 20-foot vegetation area shown in Figure C.
 - d) iv-No plants on the current King County noxious weed lists shall be planted within the shorelands. ~~(Ord. 15C-02 §§ 1, 2; Ord. 13C-12 § 2).~~

**CITY OF MERCER ISLAND
ORDINANCE NO. 19C-07**

AN ORDINANCE OF THE CITY OF MERCER ISLAND REPEALING MICC 19.07.120 AND ADOPTING A NEW CHAPTER 19.21 MICC RELATED TO SEPA REGULATIONS; PERMITTING CORRECTION OF SCRIVENER'S ERRORS DURING CODIFICATION; AUTHORIZING ISSUANCE OF RULES TO ADMINISTER THE AMENDED CODE; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Mercer Island City Code (MICC) provides rules and guidelines intended to implement the State Environmental Policy Act (SEPA) pursuant to RCW 43.21C.135; and,

WHEREAS, the Mercer Island Planning Commission reviewed the policies and regulations related to the protection of environmentally critical areas, the Shoreline Master Program, and SEPA for approximately 18 months and over the course of 16 public meetings; and,

WHEREAS, in addition to informal public outreach, consisting of articles on social media and the establishment of a dedicated webpage on "LetsTalk", a formal notice of public hearing was provided in accordance with MICC 19.15.100; and

WHEREAS, the Mercer Island Planning Commission held a public hearing on March 6, 2019 and considered public comment received prior to the close of the public hearing; and

WHEREAS, the Mercer Island Planning Commission has unanimously recommended adoption of the proposed amendments to the SEPA standards; and,

WHEREAS, a SEPA Determination of Non-Significance was issued by the City on February 4, 2019; and,

WHEREAS, the Washington Department of Commerce granted expedited review of the proposed amendments to the development regulations on February 21, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1: **Title 19 MICC Amended.** Title 19 MICC is hereby amended as follows: MICC 19.07.120 is repealed, and a new chapter 19.21 MICC is adopted as set forth in Attachment "A" to this ordinance.

Section 2: **Codification and Effective Date of the Regulations.** The City Council authorizes the Community Planning and Development Director and the City Clerk to correct errors in Attachment A, codify the regulatory provisions of the amendments into title 19 MICC, and publish the amended code. Notwithstanding the effective date of this ordinance set forth in Section 5, the effective date of the regulatory provisions in Section 1 shall be on July 29, 2019.

Section 3: **Interpretation.** The City Council authorizes the Community Planning and Development Director to adopt administrative rules and administer the amended code as necessary to implement the legislative intent of the City Council.

Section 4: **Severability.** If any section, sentence, clause or phrase of this ordinance or any city code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

Section 5: **Publication and Effective Date.** A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take effect and be in full force five days after the date of publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on June 18, 2019 and signed in authentication of its passage.

CITY OF MERCER ISLAND

Debbie Bertlin, Mayor

APPROVED AS TO FORM:

ATTEST:

Bio F. Park, Interim City Attorney

Deborah A. Estrada, City Clerk

Date of Publication: _____

- 1 | ~~19.07.120~~21 Environmental procedures.
- 2 | [19.21.010 Authority](#)
- 3 | [19.21.020 Purpose](#)
- 4 | [19.21.030 Scope and Coverage](#)
- 5 | [19.21.040 Adoption by Reference](#)
- 6 | [19.21.050 Abbreviations](#)
- 7 | [19.21.060 Designation of Responsible Official](#)
- 8 | [19.21.070 Responsible Official – Duties](#)
- 9 | [19.21.080 Lead Agency Determination and Responsibilities](#)
- 10 | [19.21.090 Timing of the Environmental Review Process](#)
- 11 | [19.21.100 Determination of Categorical Exemption](#)
- 12 | [19.21.110 Environmental Checklist](#)
- 13 | [19.21.120 Threshold Determination](#)
- 14 | [19.21.130 Early Notice of Threshold Determination and Mitigated DNS](#)
- 15 | [19.21.140 Environmental Impact Statements](#)
- 16 | [19.21.150 Internal Circulation of Environmental Documents](#)
- 17 | [19.21.160 Emergencies](#)
- 18 | [19.21.170 Public Notice](#)
- 19 | [19.21.180 Fees](#)
- 20 | [19.21.190 Authority to Condition or Deny Proposals \(Substantive Authority\)](#)
- 21 | [19.21.200 Administrative Appeals](#)
- 22 | [19.21.210 Notice – Statute of Limitations](#)

23 |
24 | ~~A.~~19.21.010 Authority. The city adopts the ordinance codified in this section under the State
25 | Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904. This section
26 | contains this city’s SEPA procedures and policies. The SEPA rules, Chapter 197-11 WAC, must be used in
27 | conjunction with this section.

28 | 19.21.020 ~~B.~~ Purpose. The purpose of these procedures is to implement the requirements of the State
29 | Environmental Policy Act of 1971 (SEPA), Chapter 43.21C RCW, as amended, and the SEPA rules adopted
30 | by the State Department of Ecology and the authority and function of the city as provided therein. These
31 | procedures shall provide the city with principles, objectives, criteria and definitions to provide an
32 | efficient overall city-wide approach for implementation of the State Environmental Policy Act and Rules.
33 | These procedures shall also designate the responsible official, where applicable, and assign
34 | responsibilities within the city under the National Environmental Policy Act (NEPA).

35 | 19.21.030 ~~C.~~ Scope and Coverage. It is the intent of the city that compliance with the requirements of
36 | this section shall constitute procedural compliance with SEPA and the SEPA rules for all proposals. To
37 | the fullest extent possible, the procedures required by this section shall be integrated with existing
38 | planning and licensing procedures utilized by the city.

39 | 19.21.040 ~~D.~~ Adoption by Reference. The city adopts by reference as though fully set forth in this
40 | section, the following sections and subsections of Chapter 197-11 WAC (the SEPA rules) as adopted by
41 | the Department of Ecology of the state of Washington on January 26, 1984, and as the same may be
42 | hereafter amended:

43 | WAC

EXHIBIT A

- 1 197-11-020 (3) Purpose
- 2 197-11-030 Policy
- 3 197-11-040 Definitions
- 4 197-11-050 Lead agency
- 5 197-11-055 Timing of the SEPA process
- 6 197-11-060 Content of environmental review
- 7 197-11-070 Limitations on actions during the SEPA process
- 8 197-11-080 Incomplete or unavailable information
- 9 197-11-090 Supporting documents
- 10 197-11-100 Information required of applicants
- 11 197-11-300 Purpose of this part (categorical exemptions and threshold determinations)
- 12 197-11-305 Categorical exemptions
- 13 197-11-310 Threshold determination required
- 14 197-11-315 Environmental checklist
- 15 197-11-330 Threshold determination process
- 16 197-11-335 Additional information
- 17 197-11-340 Determination of nonsignificance
- 18 197-11-350 Mitigated DNS
- 19 197-11-355 Optional DNS procedure
- 20 197-11-360 Determination of significance (DS)/initiation of scoping
- 21 197-11-390 Effect of threshold determination
- 22 197-11-400 Purpose of EIS
- 23 197-11-402 General requirements
- 24 197-11-405 EIS types
- 25 197-11-406 EIS timing
- 26 197-11-408 Scoping
- 27 197-11-410 Expanded scoping
- 28 197-11-420 EIS preparation
- 29 197-11-425 Style and size

EXHIBIT A

1	197-11-430	Format
2	197-11-435	Cover letter or memo
3	197-11-440	EIS contents
4	197-11-442	EIS contents on nonproject proposals
5	197-11-443	EIS contents when prior nonproject EIS
6	197-11-444	Elements of the environment
7	197-11-448	Relationship of EIS to other considerations
8	197-11-450	Cost benefit analysis
9	197-11-455	Issuance of DEIS
10	197-11-460	Issuance of FEIS
11	197-11-500	Purpose of this part (commenting)
12	197-11-502	Inviting comments
13	197-11-504	Availability and cost of environmental documents
14	197-11-508	(2) SEPA register
15	197-11-535	Public hearings and meetings
16	197-11-545	Effect of no comment
17	197-11-550	Specificity of comments
18	197-11-560	FEIS response to comments
19	197-11-570	Consulted agency costs to assist lead agency
20	197-11-600	When to use existing environmental documents
21	197-11-610	Use of NEPA documents
22	197-11-620	Supplemental environmental impact statement – Procedures
23	197-11-625	Addenda – Procedures
24	197-11-630	Adoption – Procedures
25	197-11-635	Incorporation by reference – Procedures
26	197-11-640	Combining documents
27	197-11-650	Purpose of this part (SEPA and agency decisions)
28	197-11-655	Implementation
29	197-11-660	Substantive authority and mitigation

EXHIBIT A

1	197-11-680	Appeals
2	197-11-700	Definitions
3	197-11-702	Act
4	197-11-704	Action
5	197-11-706	Addendum
6	197-11-708	Adoption
7	197-11-710	Affected tribe
8	197-11-712	Affecting
9	197-11-714	Agency
10	197-11-716	Applicant
11	197-11-718	Built environment
12	197-11-720	Categorical exemption
13	197-11-722	Consolidated appeal
14	197-11-724	Consulted agency
15	197-11-726	Cost benefit analysis
16	197-11-728	County/city
17	197-11-730	Decisionmaker
18	197-11-732	Department
19	197-11-734	Determination of nonsignificance (DNS)
20	197-11-736	Determination of significance (DS)
21	197-11-738	EIS
22	197-11-740	Environment
23	197-11-742	Environmental checklist
24	197-11-744	Environmental document
25	197-11-746	Environmental review
26	197-11-748	Environmentally sensitive area
27	197-11-750	Expanded scoping
28	197-11-752	Impacts
29	197-11-754	Incorporation by reference

EXHIBIT A

1	197-11-756	Lands covered by water
2	197-11-758	Lead agency
3	197-11-760	License
4	197-11-762	Local agency
5	197-11-764	Major action
6	197-11-766	Mitigated DNS
7	197-11-768	Mitigation
8	197-11-770	Natural environment
9	197-11-772	NEPA
10	197-11-774	Nonproject
11	197-11-776	Phased review
12	197-11-778	Preparation
13	197-11-780	Private project
14	197-11-782	Probable
15	197-11-784	Proposal
16	197-11-786	Reasonable alternative
17	197-11-788	Responsible official
18	97-11-790	SEPA
19	197-11-792	Scope
20	197-11-793	Scoping
21	197-11-794	Significant
22	197-11-796	State agency
23	197-11-797	Threshold determination
24	197-11-799	Underlying governmental action
25	197-11-800	Categorical exemptions
26	197-11-880	Emergencies
27	197-11-890	Petitioning Department of Ecology to change exemptions
28	197-11-900	Purpose of this part (agency compliance)
29	197-11-902	Agency SEPA policies

EXHIBIT A

- 1 197-11-904 Agency SEPA procedures
- 2 197-11-906 Content and consistency of agency procedures
- 3 197-11-910 Designation of responsible official
- 4 197-11-916 Application to ongoing actions
- 5 197-11-920 Agencies with environmental expertise
- 6 197-11-924 Determining the lead agency
- 7 197-11-926 Lead agency for governmental proposals
- 8 197-11-928 Lead agency for public and private proposals
- 9 197-11-930 Lead agency for private projects with one agency with jurisdiction
- 10 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one
- 11 of the agencies is a county/city
- 12 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city,
- 13 and one or more state agencies
- 14 197-11-936 Lead agency for private projects requiring licenses from more than one state agency
- 15 197-11-938 Lead agencies for specific proposals
- 16 197-11-942 Agreements on lead agency status
- 17 197-11-944 Agreements on division of lead agency duties
- 18 197-11-946 DOE resolution of lead agency disputes
- 19 197-11-948 Assumption of lead agency status
- 20 197-11-960 Environmental checklist
- 21 197-11-965 Adoption notice
- 22 197-11-970 Determination of nonsignificance (DNS)
- 23 197-11-980 Determination of significance and scoping notice (DS)
- 24 197-11-985 Notice of assumption of lead agency status
- 25 197-11-990 Notice of action

26 [19.21.050](#) ~~E~~-Abbreviations. The following abbreviations are used in this section:

- 27 A. ~~1~~-DEIS: Draft Environmental Impact Statement.
- 28 B. ~~2~~-DNS: Determination of Nonsignificance.
- 29 C. ~~3~~-DS: Determination of Significance.
- 30 D. ~~4~~-EIS: Environmental Impact Statement.
- 31 E. ~~5~~-FEIS: Final Environmental Impact Statement.

1 F. ~~6-~~SEIS: Supplemental Environmental Impact Statement.

2 ~~F-19.21.060~~ Designation of Responsible Official. For those proposals for which the city is the lead
 3 agency, the responsible official shall be the director of the development services group or a duly
 4 authorized designee.

5 19.21.070 ~~G-~~Responsible Official – Duties. The responsible official shall:

- 6 A. ~~1-~~Perform all duties of the responsible official under SEPA and the SEPA rules, and this section.
- 7 B. ~~2-~~Perform all duties required to be performed by the city under NEPA, including the provision of
 8 coordination with the appropriate federal agencies.
- 9 C. ~~3-~~Make the threshold determination on all proposals for which the city is the lead agency.
- 10 D. ~~4-~~Supervise scoping and the preparation of all draft and final environmental impact statements and
 11 supplemental environmental impact statements, whether the same are prepared by the city or an
 12 applicant.
- 13 E. ~~5-~~Establish procedures as needed for the preparation of environmental documents, including
 14 environmental impact statements.
- 15 F. ~~6-~~Ensure that environmental factors are considered by city decisionmakers.
- 16 G. ~~7-~~Coordinate the response of the city when the city is a consulted agency, and prepare timely
 17 written comments, which include data from all appropriate city departments, in response to
 18 consultation requests prior to a threshold determination.
- 19 H. ~~8-~~Provide information to citizens, proposal sponsors and others concerning SEPA and this section.
- 20 I. ~~9-~~Retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available
 21 in accordance with Chapter 42.17 RCW.
- 22 J. ~~10-~~Perform any other function assigned to the lead agency or responsible official by those sections
 23 of the SEPA rules that were adopted by reference in section MICC 19.21.040~~subsection D of this~~
 24 ~~section.~~

25 19.21.080 ~~H-~~Lead Agency Determination and Responsibilities.

- 26 A. ~~1-~~The city department receiving an application for or initiating a proposal that involves a
 27 nonexempt action shall ask the responsible official to determine the lead agency for that proposal
 28 under WAC 197-11-050 and 197-11-922 through 197-11-940 unless the lead agency has been
 29 previously determined.
- 30 B. ~~2-~~When the city is the lead agency for a proposal, the responsible official shall supervise compliance
 31 with the threshold determination requirements, and if an EIS is necessary, shall supervise
 32 preparation of the EIS.
- 33 C. ~~3-~~When the city is not the lead agency for a proposal, all city departments shall use and consider, as
 34 appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal.
 35 No city department shall prepare or require preparation of a DNS or EIS in addition to that prepared
 36 by the lead agency, unless required under WAC 197-11-600. In some cases, the city may conduct
 37 supplemental environmental review under WAC 197-11-600.
- 38 D. ~~4-~~If the city or any city department receives a lead agency determination made by another agency
 39 that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to
 40 the determination. Any objection must be made to the agency originally making the determination
 41 and resolved within 15 days of receipt of the determination, or the city must petition the

1 Department of Ecology for a lead agency determination under WAC 197-11-946 within the 15-day
2 time period. Any such petition on behalf of the city must be initiated by the responsible official.

- 3 E. ~~5-~~City departments are authorized to make agreements as to lead agency status or shared lead
4 agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, the responsible
5 official and any city department that will incur responsibilities as the result of any such agreement
6 approve the agreement.

7 ~~19.21.090~~ ~~+~~Timing of the Environmental Review Process.

- 8 A. ~~1-~~The timing of the environmental review process shall be determined based on the criteria in the
9 SEPA rules and this part of this section.
- 10 B. ~~2-~~If the city's only action on a proposal is a decision on a building permit or other license that
11 requires detailed project plans and specifications as part of a complete application for such permit
12 or license, the applicant may request in writing that the city conduct environmental review prior to
13 submission of such detailed plans and specifications. A decision as to whether or not to do early
14 environmental review, prior to receiving a complete application, shall be at the discretion of the
15 responsible official.
- 16 C. ~~3-~~The responsible official may elect to do early environmental review if adequate information is
17 available to determine the size and scope of the proposed action, including dimensions and use of
18 all proposed structures, project timing, and the extent of clearing and grading.
- 19 D. ~~4-~~The city may initiate preliminary environmental review and have informal conferences with
20 applicants prior to receipt of a complete application. However, this review shall not be binding on
21 the city or the applicant ~~(see also MICC 19.07.010(A)(1), Performance Standards for All~~
22 ~~Development).~~
- 23 E. ~~5-~~For city-initiated proposals, the initiating city department should contact the responsible official
24 as soon as a proposal is formulated to integrate environmental concerns into the decision-making
25 process as soon as possible.
- 26 F. ~~6-~~The procedural requirements of SEPA and this section shall be completed prior to the issuance of
27 a permit or final decision on a nonexempt proposal.

28 ~~+~~~~19.21.100~~ ~~-~~Determination of Categorical Exemption.

- 29 A. ~~1-~~Upon the receipt of an application for a proposal, the receiving city department shall, and for city
30 proposals, the initiating city department shall, determine whether the proposal is an action
31 potentially subject to SEPA and, if so, whether it is categorically exempt. This determination shall be
32 made based on the definition of action (WAC 197-11-704), and the process for determining
33 categorical exemption (WAC 197-11-305). As required, city departments shall ensure that the total
34 proposal is considered. If there is any question whether or not a proposal is exempt, then the
35 responsible official shall be consulted.
- 36 B. ~~2-~~If a proposal is exempt, none of the procedural requirements of this section apply to the proposal.
37 The city shall not require completion of an environmental checklist for an exempt proposal. The
38 determination that a proposal is exempt shall be final and not subject to administrative review.
- 39 C. ~~3-~~If the proposal is not categorically exempt, the city department making this determination (if
40 different from proponent) shall notify the proponent of the proposal that it must submit an
41 environmental checklist (or copies thereof) to the responsible official.
- 42 D. ~~4-~~If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions
43 prior to compliance with the procedural requirements of this chapter, except that:

1. ~~a.~~ The city shall not give authorization for:
- a. ~~i.~~ Any nonexempt action;
 - b. ~~ii.~~ Any action that would have an adverse environmental impact; or
 - c. ~~iii.~~ Any action that would limit the choice of alternatives;
2. ~~b.~~ A city department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and
3. ~~c.~~ A city department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt actions were not approved.
- E. ~~5.~~ The following types of construction shall be categorically exempt, except when undertaken wholly or partly on lands covered by water, or a rezone or any license governing emissions to the air or discharges to water is required:
1. ~~a.~~ The construction or location of any residential structures of four or fewer dwelling units;
 2. ~~b.~~ The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet or less of gross floor area and with associated parking facilities designed for 20 or fewer automobiles;
 3. ~~c.~~ The construction of a parking lot designed for 20 or fewer automobiles;
 4. ~~d.~~ Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder;
- ~~5. e. Pursuant to MICC 19.07.110(B)(3), projects in a shoreline area that involve alterations under 250 cubic yards outside the building footprint shall be exempt from review under the State Environmental Policy Act.~~
- 19.21.110 ~~K.~~ Environmental Checklist.
- A. ~~1.~~ A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this section; except, a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency.
 - B. ~~2.~~ For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the city department initiating the proposal shall complete the checklist for that proposal.
 - C. ~~3.~~ The city may complete all or part of the environmental checklist for a private proposal, if either of the following occurs:
 1. ~~a.~~ The city has technical information on a question or questions that is unavailable to the private applicant; or
 2. ~~b.~~ The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.
- 19.21.120 ~~L.~~ Threshold Determination. The responsible official shall make the threshold determination and issue a determination of nonsignificance (DNS) or significance (DS). The responsible official shall make such threshold determination in accordance with the procedures of Chapter 197-11 WAC, Part 3, as adopted by this section. The responsible official shall notify the applicant, the lead city department,

1 and (where a permit is involved) the permit-issuing city department of the threshold determination. The
 2 decision of the responsible official to issue a determination of significance shall not be appealable. The
 3 decision of the responsible official to issue a determination of nonsignificance shall be appealable
 4 pursuant to ~~subsection~~ [section MICC 19.21.200](#) ~~T of this section.~~

5 [19.21.130](#) ~~M.~~ Early Notice of Threshold Determination and Mitigated DNS.

- 6 A. ~~1.~~ As provided in this part of this section and in WAC 197-11-350, the responsible official may
 7 issue a DNS based on conditions attached to the proposal by the responsible official or on
 8 changes to, or clarifications of, the proposal made by the applicant.
- 9 B. ~~2.~~ An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-
 10 350. The request must:
- 11 1. ~~a.~~ Follow submission of a permit application and environmental checklist for a nonexempt
 12 proposal for which the city department is lead agency; and
 - 13 2. ~~b.~~ Precede the city's actual threshold determination for the proposal.
- 14 C. ~~3.~~ The responsible official should respond to the request for early notice within 10 working days.
 15 The response shall:
- 16 1. ~~a.~~ Be written;
 - 17 2. ~~b.~~ State whether the city currently considers issuance of a DS likely and, if so, indicate the
 18 general or specific area(s) of concern that is/are leading the city to consider a DS; and
 - 19 3. ~~c.~~ State that the applicant may change or clarify the proposal to mitigate the indicated
 20 impacts, revising the environmental checklist and/or permit application as necessary to
 21 reflect the changes or clarifications.
- 22 D. ~~4.~~ The city's written response under subsection [MICC 19.21.130\(B\)](#) ~~(M)(2) of this section~~ shall
 23 not be construed as a determination of significance. In addition, preliminary discussion of
 24 clarifications or changes to a proposal, as opposed to a written request for early notice, shall not
 25 bind the city to consider the clarifications or changes in its threshold determination.
- 26 E. ~~5.~~ As much as possible, the city should assist the applicant with identification of impacts to the
 27 extent necessary to formulate mitigation measures.
- 28 F. ~~6.~~ When an applicant submits a changed or clarified proposal, along with a revised or amended
 29 environmental checklist, the city shall base its threshold determination on the changed or
 30 clarified proposal and should make the determination within 15 days of receiving the changed
 31 or clarified proposal:
- 32 1. ~~a.~~ If the city indicated specific mitigation measures in its response to the request for early
 33 notice, and the applicant changed or clarified the proposal to include those specific
 34 mitigation measures, the city shall issue and circulate a DNS under WAC 197-11-340(2).
 - 35 2. ~~b.~~ If the city indicated areas of concern, but did not indicate specific mitigation measures,
 36 the city shall make the threshold determination, issuing a DNS or DS as appropriate.
 - 37 3. ~~c.~~ The applicant's proposed mitigation measures (clarifications, changes or conditions) must
 38 be in writing and must be specific and feasible. For example, proposals to "control noise" or
 39 "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X
 40 decibel" or "construct 200-foot storm water detention pond at Y location" are adequate.
 - 41 4. ~~d.~~ Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the
 42 DNS by reference to agency staff reports, studies or other documents.

- G. ~~7.~~A proposal shall not be considered changed or clarified to permit the issuance of a mitigated DNS under WAC 197-11-350 unless all license applications for the proposal are revised to conform to the changes or other binding commitments made.
- H. ~~8.~~If a mitigated DNS is issued, the aspects of the proposal that allowed a mitigated DNS to be issued shall be included in any decision or recommendation of approval of the action. Mitigation measures incorporated into the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city.
- I. ~~9.~~A mitigated DNS is issued under WAC 197-11-340(2), requiring a 14-day comment period and public notice.
- J. ~~10.~~If at any time the proposal (including associated mitigating measures) is substantially changed, the responsible official shall reevaluate the threshold determination and, if necessary, withdraw the mitigated DNS and issue a DS. Any questions regarding whether or not a change is substantial shall be resolved by the responsible official.

19.21.140 ~~N.~~ Environmental Impact Statements.

~~1A.~~ An environmental impact statement shall be required on any proposal determined to be a major action having a probable significant, adverse environmental impact. If it is determined that an environmental impact statement is required, the responsible official shall notify the applicant or proposal sponsor, the lead city department and (where a permit is involved) the department responsible for issuing the permit. The responsible official shall arrange for a meeting with the applicant or proposal sponsor to schedule necessary events and give any guidance necessary in the preparation of the EIS.

~~B2.~~ For private proposals, an EIS shall be prepared by a private applicant or agent thereof or by the city. For city proposals, the EIS shall be prepared by a consultant or by city staff. In all cases, the method of preparation and the selection of the consultant shall be subject to the approval of the responsible official. The responsible official shall assure that the EIS is prepared in a responsible and professional manner and with appropriate methodology and consistent with SEPA rules. The responsible official shall also direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document. The responsible official may retain the services of a consultant to review all or portions of EIS prepared by an applicant, the applicant's agent, or the city, at the applicant's expense. Services rendered by the responsible official and other city staff shall be subject to collection of fees as described in the city's officially adopted land use and planning fee schedule.

~~C3.~~ The responsible official will coordinate any predraft consultation procedures and scoping procedures so that the consultant preparing the EIS immediately receives all substantive information submitted by consulted agencies or through the scoping process. The responsible official shall also attempt to obtain any information needed by the consultant preparing the EIS which is on file with another agency or federal agency.

~~4D.~~ An environmental impact statement is required to analyze those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies, affected tribes and the public to identify such impacts and limit the scope of an environmental impact statement in accordance with the procedures set forth in subsection 19.21.140(E) ~~(N)(5) of this section~~. The purpose of the scoping process is to narrow the scope of every

1 EIS to the probable significant adverse impacts and reasonable alternatives, including mitigation
2 measures.

3 E5. Procedures for Scoping.

4 1a. The responsible official shall consult with agencies and the public to limit the scope of an
5 environmental impact statement by any or all of the following means. The specific method to be
6 followed shall be determined on a proposal-by-proposal basis by the responsible official, but at a
7 minimum shall include the following:

8 a.i. The responsible official shall give notice that an EIS is to be prepared, which notice shall provide that
9 agencies, affected tribes and the public may submit written comments to identify significant impacts
10 and reasonable alternatives and limit the scope of the EIS. Comments must be submitted not later than
11 21 days from the date of issuance of the declaration of significance. Additionally, notice may be sent to
12 any community groups known by the responsible official to have a possible interest in the proposal.
13 Notice of the intent to prepare an EIS and the opportunity for commenting on the scope thereof may be
14 sent with other public notices concerning the project.

15 b.ii. Additionally, the responsible official may conduct a meeting to provide the opportunity for oral
16 comment on the scope of the EIS. Notice of such meeting shall be published in a newspaper of general
17 circulation at least five days prior to the date of the meeting. The scoping meeting may be combined
18 with other meetings or hearings concerning the proposal.

19 2b. The appendix to the EIS shall include an identification of the issues raised during the scoping process
20 and whether those issues have or have not been determined significant for analysis in the EIS. All
21 written comments regarding the scope of the EIS shall be included in the proposal file.

22 3e. The public and agency consulting process regarding the scope of the EIS shall normally occur within
23 30 days after the declaration of significance is issued, unless the responsible official and the applicant
24 agree on a later date.

25 4d. EIS preparation may begin during scoping.

26 F6. The following additional elements may, at the option of the responsible official, be considered part
27 of the environment for the purpose of EIS content, but do not add to the criteria for the threshold
28 determinations or perform any other function or purpose under these rules:

29 1a. Economy;

30 2b. Social policy analysis;

31 3e. Cost-benefit analysis.

32 7G. When a public hearing is held under WAC 197-11-535(2), such hearing shall be held before the
33 responsible official.

34 19.21.150 Q. Internal Circulation of Environmental Documents. Environmental documents shall be
35 transmitted to decisionmakers and advisory bodies prior to their taking official action on proposals
36 subject to SEPA.

1 19.21.160 ~~P~~-Emergencies. The responsible official shall designate when an action constitutes an
2 emergency under WAC 197-11-880.

3 19.21.170 ~~Q~~-Public Notice.

- 4 A. ~~1~~-Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3),
5 the city shall give public notice of the DNS or DS by publishing notice in the city's permit
6 information bulletin.
- 7 B. ~~2~~-Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping
8 procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.
- 9 C. ~~3~~-Whenever the city issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620,
10 notice of the availability of those documents shall be given by:
- 11 1. ~~a~~-Indicating the availability of the DEIS in any public notice required for a nonexempt
12 license; and
- 13 2. ~~b~~-Publishing notice in the city's permit information bulletin.
- 14 D. ~~4~~-Whenever an EIS hearing is required, the hearing shall be combined with the hearing on the
15 underlying action and notice shall be provided in the manner specified in MICC 19.15.020.
- 16 E. ~~5~~- The city shall integrate the public notice required under this section with existing notice
17 procedures for the city's nonexempt permit(s) or approval(s) required for the proposal.
- 18 F. ~~6~~-The responsible official may also elect to give notice by one or more of the other methods
19 specified in WAC 197-11-510.
- 20 G. ~~7~~-The city may require an applicant to complete the public notice requirements for the
21 applicant's proposal at his or her expense.

22 19.21.180 ~~R~~-Fees.

- 23 ~~A. 1~~-Environmental Checklist. The city shall establish a fee for review of an environmental checklist
24 performed by the city when the city is the lead agency. The fee shall be identified in the city's
25 officially adopted land use and planning fee schedule, and collected prior to undertaking a
26 threshold determination.
- 27 ~~B. 2~~-Environmental Impact Statements. For all proposals when the city is the lead agency and the
28 responsible official determines that an EIS is required, the applicant shall be charged a fee for
29 the administrative costs of supervision and preparation of the draft and final EISs. This fee shall
30 be identified in the city's officially adopted land use and planning fee schedule, and collected
31 prior to the initiation of work on the draft EIS.
- 32 ~~C.A. 3~~-For private proposals, the cost of retaining consultants for assistance in EIS preparation shall
33 be borne by the applicant whether the consultant is retained directly by the applicant or by the
34 city.
- 35 ~~D.B. 4~~-Consultant Agency Fees. No fees shall be collected by the city for performing its duty
36 as a consultant agency.
- 37 ~~E.C. 5~~-Document Fees. The city may charge any person for copies of any documents prepared
38 pursuant to the requirements of this section and for mailing thereof, in a manner provided by
39 Chapter 42.17 RCW; provided, no charge shall be levied for circulation of documents as required
40 by this section to other agencies.

41 19.21.190 ~~S~~-Authority to Condition or Deny Proposals (Substantive Authority).

- 1 A. ~~1-~~The policies and goals set forth in this section are supplementary to those in the existing
2 authorization of the city.
- 3 B. ~~2-~~The city may attach conditions to a permit or approval for a proposal so long as:
4 1. ~~a-~~Such conditions are necessary to mitigate specific probable adverse environmental
5 impacts identified in environmental documents prepared pursuant to this section; and
6 2. ~~b-~~Such conditions are in writing; and
7 3. ~~c-~~The mitigation measures included in such conditions are reasonable and capable of being
8 accomplished; and
9 4. ~~d-~~The city has considered whether other local, state or federal mitigation measures applied
10 to the proposal are sufficient to mitigate the identified impacts; and
11 5. ~~e-~~Such conditions are based on one or more policies in subsection ~~(S)(4)~~ [MICC 19.21.190\(D\)](#)
12 of this section and cited in the license or other decision document.
- 13 C. ~~3-~~The city may deny a permit or approval for a proposal on the basis of SEPA so long as:
14 1. ~~a-~~A finding is made that approving the proposal would result in probable significant adverse
15 environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this
16 section; and
17 2. ~~b-~~A finding is made that there are no reasonable mitigation measures capable of being
18 accomplished that are sufficient to mitigate the identified impact; and
19 3. ~~c-~~The denial is based on one or more policies identified in subsection ~~(S)(4)~~ [MICC](#)
20 [19.21.190\(D\)](#) of this section and identified in writing in the decision document.
- 21 D. ~~4-~~The city designates and adopts by reference the following policies as the basis for the city's
22 exercise of authority pursuant to this section:
23 1. ~~a-~~The city shall use all practicable means, consistent with other essential considerations of
24 state policy, to improve and coordinate plans, functions, programs, and resources to the end
25 that the state and its citizens may:
26 a. ~~i-~~Fulfill the responsibilities of each generation as trustee of the environment for
27 succeeding generations;
28 b. ~~ii-~~Assure for all people of Washington safe, healthful, productive, and aesthetically and
29 culturally pleasing surroundings;
30 c. ~~iii-~~Attain the widest range of beneficial uses of the environment without degradation,
31 risk to health or safety, or other undesirable and unintended consequences;
32 d. ~~iv-~~Preserve important historic, cultural, and natural aspects of our national heritage;
33 e. ~~v-~~Maintain, wherever possible, an environment which supports diversity and a variety
34 of individual choice;
35 f. ~~vi-~~Achieve a balance between population and resource use which will permit high
36 standards of living and a wide sharing of life's amenities;
37 g. ~~vii-~~Enhance the quality of renewable resources and approach the maximum attainable
38 recycling of depletable resources.
- 39 2. ~~b-~~The city recognizes that each person has a fundamental and inalienable right to a
40 healthful environment and that each person has a responsibility to contribute to the
41 preservation and enhancement of the environment.
- 42 3. ~~c-~~The city adopts by reference the policies in the following city codes, ordinances,
43 resolutions, and plans, as presently adopted or hereafter amended:
44 a. ~~i-~~The comprehensive plan of the city;

- 1 b. ~~ii~~-The development code of the city;
- 2 c. ~~iii~~-The policies of the Mercer Island environmental procedures code, including the
- 3 policies and objectives of SEPA (Chapter 43.21C RCW) as adopted by the city;
- 4 d. ~~iv~~-The parks and open space plan of the city;
- 5 e. ~~v~~-The community facilities plan of the city;
- 6 f. ~~vi~~-The design commission, Ordinance No. 297, and the design guidelines, Ordinance No.
- 7 491, of the city;
- 8 g. ~~vii~~-The city's arterial plan, Ordinance No. 404;
- 9 h. ~~viii~~-The six-year comprehensive street improvement program;
- 10 i. ~~ix~~-1976 memorandum agreement regarding I-90, signed by the cities of Mercer Island,
- 11 Bellevue and Seattle, and the Washington State Department of Transportation;
- 12 j. ~~x~~-Model Traffic Ordinance, Chapter 10.98 MICC;
- 13 k. ~~xi~~-Street improvement and maintenance guidelines, approved September 13, 1982;
- 14 l. ~~xii~~-Sewer rates and regulations, Chapter 15.06 MICC;
- 15 m. ~~xiii~~-Water system, Chapter 15.12 MICC;
- 16 n. ~~xiv~~-Minimum fire flow requirements, Resolution No. 778;
- 17 o. ~~xv~~-Comprehensive city water plan.
- 18 E. ~~5~~-The responsibility for enforcing conditions under SEPA rests with the city department or
- 19 official responsible for enforcing the decision on the underlying action.
- 20 F. ~~6~~-This part of this section shall not be construed as a limitation on the authority of the city to
- 21 approve, deny or condition a proposal for reasons based upon other statutes, ordinances or
- 22 regulations.

23 19.21.200 ~~F~~-Administrative Appeals.

- 24 A. ~~1~~-Except for SEPA procedural and substantive decisions related to permits, deviations and
- 25 variances issued by the code official or hearing examiner under the shoreline management
- 26 provisions or any legislative actions taken by the city council, the following shall be appealable
- 27 to the hearing examiner under this section:
 - 28 1. ~~a~~-The decision to issue a determination of nonsignificance rather than to require an EIS;
 - 29 2. ~~b~~-Mitigation measures and conditions that are required as part of a determination of
 - 30 nonsignificance;
 - 31 3. ~~c~~-The adequacy of an FEIS or an SEIS;
 - 32 4. ~~d~~-Any conditions or denials of the proposed action under the authority of SEPA.
- 33 B. ~~2~~-How to Appeal. The appeal must be consolidated with any appeal that is filed on the proposal
- 34 or action, and must conform to the requirements of MICC 19.15.020(J), Permit Review
- 35 Procedures. The appeal may also contain whatever supplemental information the appellant
- 36 wishes to include.
- 37 C. ~~3~~-For any appeal under this subsection, the city shall provide for a record that shall consist of
- 38 the following:
 - 39 1. ~~a~~-Findings and conclusions;
 - 40 2. ~~b~~-Testimony under oath; and
 - 41 3. ~~c~~-A taped or written transcript.

1 D. ~~4~~-The procedural determination by the city's responsible official shall carry substantial weight in
2 any appeal proceeding.

3 E. ~~5~~-The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or
4 approval for which a statute or ordinance establishes a time limit for commencing judicial
5 appeal.

6 19.21.210 ~~U~~-Notice – Statute of Limitations.

7 A. ~~1~~-The applicant for or proponent of an action of the city, when the action is one the city is
8 proposing, may publish notice of action pursuant to RCW 43.21C.080 for any action.

9 B. ~~2~~-The form of the notice shall be substantially in the form and manner set forth in RCW
10 43.21C.080. The notice may be published by the city for city projects or the applicant or
11 proponent for private projects.

12 C. ~~3~~-If there is a time period for appealing the underlying city action to court, the city shall give
13 notice stating the date and place for commencing an appeal of the underlying action and an
14 appeal under Chapter 43.21C RCW, the State Environmental Policy Act. Notice shall be given by
15 mailing notice to parties of record to the underlying action and may also be given by publication
16 in a newspaper of general circulation. (Ord. 17C-12 § 6; Ord. 10C-06 § 1; Ord. 08C-01 § 3; Ord.
17 05C-12 § 6; Ord. 03C-11 §§ 1, 2, 3; Ord. 99C-13 § 1. Formerly 19.07.100).



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memorandum

date June 10, 2019

to City of Mercer Island City Council
City of Mercer Island Community Planning and Development Department

from Aaron Booy, Teresa Vanderburg, and Madeline Remmen

subject City of Mercer Island 2019 SMP Periodic Review: Cumulative Impacts Analysis for Updates to Redevelopment Standards for Private Docks

Introduction

The City of Mercer Island completed a comprehensive update of shoreline management policies and regulations between 2009 and 2015, with Shoreline Master Program (SMP) approved by the Washington State Department of Ecology in March 2015. As part of the comprehensive update effort, the City was required to evaluate the cumulative impacts of “reasonably foreseeable” future development to verify that the proposed policies and regulations for shoreline management are adequate to ensure *no net loss* of shoreline ecological functions. In 2012, the City completed an assessment of cumulative impacts from the SMP, and concluded that anticipated development and use occurring under the SMP would not result in cumulative impacts and would meet the no net loss standard (City of Mercer Island, 2012¹). A key component of protecting shoreline ecological functions under the adopted SMP was establishment of new standards for overwater moorage structures, including development standards for replacement, repair and maintenance of the pier, dock and platform lift structures that are commonly associated with shoreline residential lots around the City (MICC 19.07.110.E.6.b).

The City is currently considering minor updates to the adopted SMP, consistent with Ecology’s mandated periodic review process. Along with minor updates to ensure ongoing consistency with State Shoreline Management Act (SMA) guidelines, the City is integrating Critical Areas standards that are also currently being updated (consistent with Best Available Science and State guidelines for wetlands, streams and other critical areas issued since 2014) and considering changes to development standards for replacement and repair of existing overwater piers and docks. During local review of the Draft SMP, the City Council requested revisions to the existing regulations for replacement and/or repair of existing piers and docks. The request has triggered review and analysis of cumulative impacts for this specific code revision.

This technical memorandum provides a planning level assessment of the potential cumulative impacts that would occur based on proposed changes to SMP standards for replacement and/or repair of existing piers and docks. The

¹ The City of Mercer Island 2012 Shoreline Cumulative Impacts Analysis is available on the City website:
<http://www.mercergov.org/files/Attachment%203%20-%20Cumulative%20Impacts%20Analysis.pdf>

analysis is an addendum to the cumulative impact analysis (CIA) that was prepared in support of the SMP in 2012 (City of Mercer Island, 2012). This addendum is limited in scope to focus only on updates to replacement/repair development standards for overwater structures, and does not consider updates to integrated critical area regulations currently being considered by the City. The proposed updates to integrate new critical areas standards will increase protection for shoreline ecological functions, as the updated critical areas regulations are providing additional protections, buffers and setbacks for wetlands, streams, aquifers, fish and wildlife habitats, and geological hazards. The City has coordinated with the Department of Ecology to incorporate required and recommended amendments related to the protection of critical areas within the shoreline jurisdiction. Other minor updates to the SMP as identified through the Ecology Periodic Review Checklist are also not considered in this technical memorandum, as they have no implications (or minimal beneficial implications) for shoreline ecological functions.

As with the 2012 CIA, this 2019 addendum is limited to cumulative impacts of reasonably foreseeable future development in areas subject to SMA jurisdiction. For Mercer Island, the shoreline of the state extends along approximately 14.7 linear miles of Lake Washington frontage. Lake Washington is considered a “shoreline of statewide significance,” due to its total area over 1,000 acres. The lake shoreline is predominantly developed with single family residential use, and the vast majority of residential lots have existing private piers/docks/floats.

Analysis Approach

To assess potential cumulative impacts, ESA reviewed permit data from recent years (since the new SMP became effective in 2015) provided by the City. Additionally, ESA used 2017 aerial photos of the Mercer Island shoreline to measure current dock width and overall dock length from the approximate OHWM. This aerial analysis was completed for 110 residential shoreline parcels, selected at random in order to provide a representative sample of existing dock dimensional patterns across Mercer Island.

ESA used the permit data to estimate the number of dock/pier redevelopment proposals that are expected on an annual basis in the years ahead, and attempts to quantify approximately how many of these activities would include replacement of exterior surfaces (including decking material) versus structural elements (e.g., pilings or supports). ESA discussed the estimates of anticipated dock/pier redevelopment with City staff to get their perspective.

Relying on the 2012 CIA and updated analysis, ESA qualitatively assessed potential detrimental and beneficial effects to shoreline ecological functions and provided recommendations that would increase the beneficial effects occurring as part of pier/dock replacement. ESA concludes with a determination, based on consideration of cumulative impacts, as to whether updated pier/dock replacement standards could change the overall determination of no net loss (NNL) of shoreline ecological functions documented in the 2012 CIA.

Current Circumstances

Current conditions within the City of Mercer Island are generally similar to those described in the 2012 CIA. The 2012 CIA documented a total of 690 pier/dock structures across the City’s Lake Washington shoreline, of which 678 (98%) occur within the Urban Residential environment associated with single family residential lots. As documented in 2012, the large majority of the City’s 713 residential lots along the shoreline have existing private piers/docks. The total overwater coverage of piers/docks associated with private residential use was calculated to

be approximately 532,000 square feet (as documented in the 2012 CIA), or an average of approximately 785 square feet of overwater coverage per pier/dock. The SMP allows a maximum coverage of 480 square feet for any new or reconfigured moorage facility (pier/dock/float structure) associated with a single family lot as per MICC 19.07.110(E)(6)(a). However, applicants may choose to use the alternative development standards listed in MICC 19.07.110(E)(6)(c), which allows larger docks to be built pending approval from the Corps of Engineers and Washington Department of Fish and Wildlife (WDFW). Permit approvals for private residential piers/floats prior to 2015 resulted in a proliferation of overwater structures, resulted in likely greater overwater coverage on average than what the current regulations allow.

For 110 shoreline lots selected at random, we measured existing dock width within the first 30 feet waterwater from the OHWM, and approximate overall dock length from the OHWM. Results are presented in Table 1, below.

Table 1. Analysis of existing private residential pier/docks along the Mercer Island shoreline; random sample of 110 (approximately 16% of total private residential pier/dock count).

APPROXIMATE DOCK WIDTH WITHIN 30 FEET OF SHORELINE	NO. OF STRUCTURES	PERCENT OF TOTAL SAMPLED	OVERALL DOCK LENGTH (AVERAGE FEET)
4 FEET	7	6%	84
5 FEET	13	12%	78
6 FEET	62	56%	79
7 FEET	12	11%	62
8 FEET	9	8%	73
9 FEET	2	2%	63
15+ FEET	5	5%	64
TOTALS	110	100%	

ESA more closely reviewed the 20 docks noted above with measured widths of 4 or 5 feet and determined that none of these were narrowed as a result of the current SMP replacement/repair requirements. This review was determined through comparative review across the series of aerial imagery dating back to 2007 (as included in King County iMap – available <https://www.kingcounty.gov/services/gis/Maps/imap.aspx>). The majority of these twenty docks have had the same configuration since prior to 2009. Only one of the structures showed up as a replacement that had occurred since the current SMP standards became effective. For this one pier/dock, the replacement was a total replacement (with larger waterward end configuration than had previously existed), so this triggered requirement for new/expanded moorage structure in the SMP.

This review suggests that in the years since the current SMP became effective, the standards for replacement piers and docks being assessed by this memorandum (MICC 19.07.110 E.6.b.ix) have been triggered infrequently. It is possible that this may change in the future, with more proposals for decking replacement (or other pier/dock structure replacement) exceeding the 50% threshold over a 5-year period. That said, based on review of pier/dock conditions, it would appear that the majority of pier/dock maintenance/repair/replacement permits issued over the last several years must have occurred below the 50% threshold, and as such have been approved without triggering requirements to increase the amount of light penetrating surface.

Existing Development Standards and Proposed Update

Existing Pier and Dock Redevelopment Standards

This analysis is focused on one specific section of the City's SMP - MICC 19.07.110.E.6.b. Standards in this section are directed at proposals for repair and replacement of existing piers and docks. For any proposal that would replace or reconstruct "more than 50 percent of the structure's exterior surface (including decking) or structural elements (including pilings)" as measured cumulatively to include the previous 5-year period, then "the replaced or reconstructed area of the structure must also comply with the following standards":

(A) Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance;

(B) The height above the OHWM for moorage facilities, except floats, shall be a minimum of one and one-half feet and a maximum of five feet; and

(C) An existing moorage facility that is five feet wide or more within 30 feet waterward from the OHWM shall be replaced or repaired with a moorage facility that complies with the width of moorage facilities standards specified in subsection (E)(4) of this section (Table D).

These standards are intended to reduce the amount of shade created, by improve the extent of harmful overwater coverage from EXISTING piers/docks as they are repaired and replaced over time. Most of the overwater structures in the City's shoreline jurisdiction are associated with private residential development which have generally been in place for 30+ years, and are part of the baseline condition established by the City's 2009 Shoreline Analysis and Inventory Report².

The new standards treat any proposal for pier reconstruction over the 50% threshold the same as pier replacement, whether the applicant is intending to only replace decking and other exterior surfaces, or is implementing a larger effort to replace piers or other structural elements.

Proposed Update to Pier and Dock Redevelopment Standards

The City proposes to maintain standards that require proposals for pier/dock replacement and reconstruction exceeding the 50% threshold to increase the amount of light penetration through and under the structure. The 50% threshold would still be applied cumulatively to include the previous 5-year period. The proposed change would differentiate between projects that replace 50% or more of the decking and other exterior surfaces and those that include replacement or reconstruction of 50% or more of the structural elements (including piles).

- **For proposals that would replace greater than 50% of exterior surfaces (decking included):** the applicant would be required to fully replace the decking with materials that allow a minimum of 40 percent light transmittance. The applicant would not be required to increase the dock height to at least 1.5 feet above the lake level at ordinary high water, and would not be required to narrow the first 30 feet of the pier/dock structure extending from the OHWM to 4 feet in width.

² Available: <http://www.mercergov.org/files/Attachment%202.pdf>

- **For proposals that would replace greater than 50% of the structural elements (piles included):** all of the existing standards would be maintained.

Benchmarking from Neighboring Jurisdiction Standards

ESA also reviewed current regulations from other Lake Washington cities related to repair and replacement of existing docks, specifically replacement of decking. This review included standards for dock repair in the Cities of Kirkland, Bellevue, Kenmore and Lake Forest Park. These jurisdictions have all adopted standards similar to the proposed revisions in Mercer Island for repair and replacement of docks. Generally, any proposed repair and replacement of 50 percent or more of the decking or decking substructure for overwater docks must demonstrate the following:

- Replace solid-surface decking with grated material that allows a minimum of 40 percent light transmittance through the material.
- Materials must be environmentally neutral (no wood treated with creosote, pentachlorophenol or other toxic chemicals) and meet material standards outlined by the Washington State Department of Fish and Wildlife (WDFW) for new overwater structures.

In these other jurisdictions, only new and expanded docks must be constructed no greater than 4 feet wide within the first 30 feet waterward of the OHWM and be raised to at least 1.5 feet above the water elevation. These dimensional standards do not apply to repair projects requiring deck replacement only.

Benchmarking from WDFW Standards

The WDFW regulates in-water and over-water development activities by issuing Hydraulic Project Approvals (HPAs) in accordance with 77.55 RCW. WDFW's guidance for Fresh Water Residential Overwater Structures (Revised June 2018, and issued by WDFW Region 4 Habitat Program) details requirements for both repair/replacement of piers and docks, and for new/modified/expanded piers and docks. The WDFW Guidance directs any proposal for replacement decking to use grating that has a minimum of 40% open space across the entire extent of the pier (decking with 60% open space is recommended, although this is less frequently used due to additional need for supportive substructure elements that largely negate the benefit of the additional open space). Allowances are provided for solid decking around the very edges of a pier/dock, in places where substructure would block light transmittance anyway. WDFW guidance requires replacement of decking with light penetrable grating whenever decking repair or replacement is proposed (no threshold based on percentage of area replaced, or cost).

For proposals that only replace decking, and for other projects that are only repairing or replacing other structural portions of an existing pier or dock without changing the size or configuration of the structure, WDFW guidance does not require dimensional changes (either in pier/dock width within 30 feet of the shoreline, or in pier/dock elevation above the OHWM). WDFW's dimensional standards for new, modified, or expanded pier/dock structures are generally consistent with the standards within the Mercer Island SMP. It is only for new, modified, or expanded dock/pier structures that the first 30-feet of the structure is recommended to be 4-foot wide (the guidance actually allows for this portion to be 6-foot wide, but encourages the narrower 4-foot width).

Recent Shoreline Permit History and Reasonably Foreseeable Future Redevelopment Requests

The 2012 CIA noted that an average of 19.4 docks per year were modified or redeveloped during the period from 2000 to 2010. The CIA anticipated an increase in this rate, based on anecdotal information from property owners and City staff observations. The CIA forecasted that an average of 25 overwater structures would be redeveloped per year for a total of 500 dock redevelopments over a 20-year planning period.

City staff provided shoreline permit records for the last several years. ESA queried these records for 2015 through 2018 to determine the number of pier/dock replacement and repair activities that have occurred (Table 2).

Table 2. Count of shoreline permits for maintenance, repair and replacement of existing overwater piers/docks since 2015

	2015	2016	2017	2018
REPLACE PILES AND/OR FRAMING STRUCTURE	4	2	3	4
REPLACE DECKING ONLY	1		1	2
REPLACE BOTH STRUCTURE AND DECKING	3	3	5	4
NEW BOAT LIFT ONLY		1		
“NORMAL REPAIR / MAINTENANCE” (UNSPECIFIED)	1	2		1
FULL PIER/DOCK REPLACEMENT	4		2	
TOTALS	13	8	11	11

Based on recent permit history, it is likely that the 2012 CIA was over-predicting the annual rate of pier/dock replacement activity. Considering projections from the 2012 effort and recent permit history, we anticipate from 10 to 20 pier/dock repair and replacement requests on an annual basis in the foreseeable future.

That said, it is likely that less than 25% of these future requests will trigger standards relevant to repair and replacement of decking only. The trend of recent permit requests suggests that repair and/or replacement of piers and other structures occurs more frequently, and also suggests that in many instances, pier/dock owners completed activities so as to stay below the 50% threshold under MICC.

The analysis of existing dock dimensional conditions, presented in Table 1 and the subsequent narrative on pages 3 and 4 of this memo, also suggests that there will be relatively few circumstances where requirements associated with decking replacement only will be triggered.

Assessment of Cumulative Impacts

Ecology guidance states that “local governments should use existing shoreline conditions as the baseline for measuring no net loss of shoreline ecological functions.” The City’s shoreline areas are nearly fully developed consistent with established land use designations – therefore, most development proposals involve redevelopment. Our review of impacts associated with future redevelopment of overwater structures is focused on those proposals that repair and update existing structures without proposing an increase in size, dimension or reconfiguration.

Consistent with the 2012 CIA, this analysis uses methods to assess the anticipated loss and/or gain in shoreline ecological functions associated with implementation of updated overwater moorage structure development standards into the future. Categories of shoreline ecological functions include habitat, water quality, and hydrology. Unlike the 2012 CIA, we do not attempt to quantify the ecological function “points” associated with anticipated future development; rather, a qualitative approach is used.

Effects to shoreline ecological functions have been summarized below by general function type, specifically by fish/aquatic habitat, water quality, hydrology and riparian vegetation.

Fish/Aquatic Habitat

Habitat for fish, especially juvenile salmonids, and other aquatic species is the primary shoreline ecological function affected by docks/piers. Chapter 12 on Piers, Docks and Overwater Structures from Ecology’s SMP Handbook (Ecology Publication Number: 11-06-010, Revised June 2017) describes the environmental impacts of overwater structures, including effects on movement of juvenile salmon along a shoreline, and patterns of predation.

The 2012 CIA concluded that each dock replacement and repair action would result in “a slight improvement” above baseline habitat conditions. The 2012 CIA appears to have assumed that requirements for light penetrable grating and structural changes would be triggered for all pier/dock replacement proposals, such that slight improvement would occur for every dock repair / reconstruction request (25 times annually).

Based upon more recent permit data, it appears that the 2012 CIA overestimated the frequency by which dock replacement or reconstruction would occur. That said, we believe that any exterior surface (decking) replacement proposal that replaces solid decking with 40% light penetrable decking will serve to reduce impacts on juvenile salmon rearing and out-migrating along the Lake Washington shoreline. Further, it is anticipated that the proposed less burdensome standards for exterior surface replacement may result in a faster conversion of light impenetrable to light-penetrable grating over time. While existing docks with replaced decking would not be required to increase height to a minimum of 1.5 feet or be required to shrink the width to 4 feet, the benefits of light penetrability alone would result in incremental benefits to aquatic habitats over time.

Water Quality

The 2012 CIA did not assess implications on docks/piers on water quality functions. The current SMP limits the use of creosote and other toxic chemicals allowed in dock construction. The proposed update to the CIA does not change standards for use of WDFW and-Corps approved materials for all in-water and over-water structures. All materials required by state and federal permit authorities remain the same. For this reason, it is anticipated that the provisions for pier/dock repair and replacement will continue to incrementally improve water quality functions by decreasing the extent of previously installed structures that have negative water quality impacts.

Hydrology

The 2012 CIA indicated that shoreline hydrology functions would not be affected as a result of the new SMP standards. Based upon our review, it appears that revisions to the decking replacement requirements for docks would not have any measurable effect on hydrologic functions such as wave action, water flow or sediment transport.

Riparian Habitat

The 2012 CIA did not separately evaluate effects of the standards to riparian habitat. However, based upon the developed nature of the shoreline in Mercer Island, it is apparent that riparian habitat is lacking and a limiting factor. For any short-term impacts to existing vegetation associated with construction of proposed dock repairs or replacement, the SMP will continue to require that disturbance be minimized to the greatest extent possible and that replacement with native herbaceous and/or woody vegetation occurs following construction. The proposed code changes do not require additional riparian plantings for projects that do not alter riparian habitat. It appears that the proposed updates to pier/dock decking replacement standards would have no measurable effect on riparian habitat values and functions over time.

Cumulative Impacts

The 2012 CIA assigned ‘cumulative impact points’ for all assessed elements of the SMP. Based on these points, the standards for redevelopment of existing docks were anticipated to result in 500 beneficial points, indicating a significant anticipated cumulative benefit (25 redevelopment projects annually, each accounting for +1 point, multiplied by the 20 year planning period). Overall, the 2012 CIA identified only 32 degradation points (associated with limited potential for new residential development and new dock development on lots without structures at the time of the 2012 analysis), and assigned beneficial points to anticipated park projects (+450) and residential redevelopment actions (+140). The 2012 CIA was reviewed and approved by Ecology as part of the full comprehensive SMP update.

Based upon this limited CIA for replacement of dock decking alone, we would not anticipate changes to the conclusions of the 2012 CIA. As a result of the new proposed standards and the reduced pace of dock/pier replacement, fewer beneficial points would accrue during the replacement of dock decking projects. However, the requirements would continue to improve conditions for aquatic habitats incrementally over time. Further, based on recent permits, it is anticipated that a greater number of residential docks would likely be repaired with new decking, therefore resulting in a greater rate of benefit over the planning horizon.

Recommendations for SMP Updates to Maximize Gain in Ecological Function as Future Dock/Pier Resurfacing Proposals Occur

ESA recommends that the City consider updates to development standards in MICC 19.07.110.E.6.b to further increase gains in ecological functions as repair and replacement of pier/dock decking occurs in the foreseeable future.

Primary recommendation: For exterior surface (including decking) repair and replacement only, eliminate the “50% of exterior surface” threshold altogether or reduce the threshold to 20%. Implementing this change would provide additional consistency with WDFW guidance, and is anticipated to increase the frequency with which existing piers/docks would be re-decked with light transmittable grating in the years ahead. This approach may also reduce challenges associated with application of this standard.

Secondary recommendation: Consider requiring additional mitigation measures for any repair or replacement proposal under MICC 19.07.110.E.6.b.ix (as revised):

- Where there is existing skirting around a pier/dock structure, require that removal (or reduction in coverage) of any existing skirting be included as a standard for decking replacement.
- Where there is no skirting around the existing structure, require implementation of shoreline vegetation enhancement, with installation of a defined amount of native tree and native shrub species within 10 feet landward of OHWM to enhance and improve riparian habitat along the shoreline. Native vegetation is lacking along the Mercer Island shoreline and adding native trees and shrubs will provide shade and nutrient inputs through leaf litter. Similar to WDFW standards, we recommend planting two native trees (Douglas fir, western red cedar, western hemlock, red alder, quaking aspen, Oregon white oak, Pacific willow) and three native shrubs with the potential to achieve heights of four feet or greater. This would be in addition to any native plantings required to mitigate construction disturbance under MICC 19.07.110.E.6.b.viii, and in addition to any native vegetation required for new development adding over 500 square feet of additional gross floor area or impervious surface per MICC 19.07.110.E.9.d.

If one or both of these recommended additional standards were required for all overwater moorage structure redevelopment proposals, the gains in ecological functions (primarily for fish habitat) already associated with use of light penetrable grating would be extended.

Conclusion

ESA does not believe that any additional measures are required to achieve beneficial gains in shoreline ecological functions. That said, these gains could be increased if the City chooses to incorporate one or more of the recommended additional standards that are suggested in the previous section.

Conclusions on the future performance of key shoreline functions as a result of the updated standards for pier/dock/float resurfacing proposals are summarized as follows:

Aquatic Habitat: No net loss of aquatic habitat function is anticipated. The replacement of existing decking with grated materials will be an incremental improvement over existing conditions within the City's shoreline.

Water Quality: No net loss in water quality is expected. As previously installed materials are replaced (including likely removal of treated lumber that is slowly leaching contaminants into Lake Washington), the resurfacing of existing piers/docks/floats is anticipated to improve water quality.

Hydrology: No net loss in hydrological function from baseline is expected.

Riparian Habitat: No net loss in riparian habitat functions is anticipated due to this change in standards for dock repair. If the City chooses to implement additional plantings as part of the dock repair and replacement, then riparian habitat functions will likely increase incrementally.

Compared to existing standards, which had required that any proposal resurfacing more than 50% of an overwater moorage structure had additionally reconfigure the dock to narrow the portion close to shore and increase the

height above the ordinary high water of the lake surface to a minimum of 1.5 feet, the new approach may result in less ecological gain for each replacement proposal. However, as previously discussed, the re-decking requirement alone will likely result in incremental gains in shoreline ecological functions over time.



PLANNING SCHEDULE

Please email the City Manager & City Clerk when an agenda item is added, moved, or removed.

Special Meetings and Study Sessions begin at 6:00 pm. Regular Meetings begin at 7:00 pm. Items are not listed in any particular order. Agenda items & meeting dates are subject to change.

JUNE 18		DUE TO:	6/7 D/P	6/10 FN	6/10 CA	6/11 Clerk
ABSENCES:						
ITEM TYPE TIME TOPIC			STAFF		SIGNER	
EXECUTIVE SESSION (6:00-7:00 pm)						
60	Executive Session to discuss with legal counsel pending or potential litigation pursuant to RCW 42.30.110(1)(i) for approximately 60 minutes					
SPECIAL BUSINESS (7:00 pm)						
10	Resolutions of Appreciation Recognizing Francie Lake's & Cathy Gentino's Service to the City of Mercer Island		Cindy Goodwin & Chip Corder			
CONSENT CALENDAR						
--	AB 5581: Third Amendment to Purchase and Sale Agreement with Parkway Management Group to Develop Long-Term Transit Commuter Parking in the Town Center		Bio Park			
--	AB 5579: Acceptance of Washington State Health Care Authority Funds for Trauma Informed Approaches		Cindy Goodwin			
PUBLIC HEARING: Legal Notice 5/22						
45	AB 5565: Interim Design and Concealment Standards for Small Cell Facilities Deployment Ordinance (Extension and Adoption)		Evan Maxim			
REGULAR BUSINESS						
60	AB 5578: Memorandum of Understanding (MOU) with Mainstreet Property Group for the Proposed Commuter Parking and Mixed-Use Project		Jessi Bon			
30	AB 5582: Agreement to Terminate Memorandum of Understanding (MOU) with the Mercer Island Center for the Arts (MICA)		Bio Park			
45	AB 5580: Critical Areas Code, Shoreline Master Program, SEPA, and Ancillary Amendments (3 rd Reading & Adoption)		Robin Proebsting			

JUNE 21 – MID-YEAR PLANNING SESSION		DUE TO:	5/31 D/P	6/4 FN	6/4 CA	6/7 Clerk
LEGAL: Published 6/12						
ABSENCES:						
1:00-6:00 pm at MICEC						

JULY 2		DUE TO:	7/5 D/P	7/8 FN	7/8 CA	7/9 Clerk
LEGAL: Published 6/26						
CANCELED						

JULY 16		DUE TO:	7/5 D/P	7/8 FN	7/8 CA	7/9 Clerk
ABSENCES:						
ITEM TYPE TIME TOPIC			STAFF		SIGNER	
STUDY SESSION (6:00-7:00 pm)						
60	AB xxxx: Sound Transit Park-and-Ride Parking Permit Program		Kirsten Taylor		Ali	
60	AB 5563: Aubrey Davis Park Master Plan Concept Alternatives		Paul West		Jessi	
SPECIAL BUSINESS (7:00 pm)						

--	AB 5575: Parks & Recreation Month Proclamation	Jessi Bon	
CONSENT CALENDAR			
PUBLIC HEARING			
REGULAR BUSINESS			
30	AB xxxx: 2019-2020 Interlocal Agreement with MISD for Mental Health School-Based Counseling Services	Cindy Goodwin	
EXECUTIVE SESSION			

JULY 17 – 6:00 PM (SPECIAL MEETING)			
LEGAL:			
Special Joint Meeting with Planning Commission			

AUGUST 6		DUE	7/26	7/29	7/29	7/30
ABSENCES: Bon		TO:	D/P	FN	CA	Clerk
ITEM TYPE TIME TOPIC				STAFF		SIGNER
STUDY SESSION (6:00-7:00 pm)						
60	AB xxxx: Recology Solid Waste Contract Implementation Plan Update [Placeholder]		Jason Kintner			
SPECIAL BUSINESS (7:00 pm)						
CONSENT CALENDAR						
PUBLIC HEARING						
REGULAR BUSINESS						
	AB xxxx: Code Amendment to Update School Impact Fees (1 st Reading and Adoption)		Evan Maxim			
EXECUTIVE SESSION						

AUGUST 20						
POTENTIALLY CANCELED						

SEPTEMBER 3 – CANCEL?? (SEPT 10?)		DUE	8/23	8/26	8/26	8/27
ABSENCES:		TO:	D/P	FN	CA	Clerk
ITEM TYPE TIME TOPIC				STAFF		SIGNER
STUDY SESSION (6:00-7:00 pm)						
60	Proposed Commuter Parking & Mixed-Use Project Update [Placeholder]		Jessi Bon			
SPECIAL BUSINESS (7:00 pm)						
5	Mayor's Day of Concern for the Hungry Proclamation		Cindy Goodwin		Ali	

5	National Preparedness Month	Jennifer Franklin	Ali
CONSENT CALENDAR			
PUBLIC HEARING			
REGULAR BUSINESS			
45	Second Quarter 2019 Financial Status Report & 2019-2020 Budget Adjustments	Chip Corder	Ali
EXECUTIVE SESSION			

SEPTEMBER 17		DUE TO:	9/6 D/P	9/9 FN	9/9 CA	9/10 Clerk
ITEM TYPE TIME TOPIC		STAFF			SIGNER	
ABSENCES:						
STUDY SESSION (6:00-7:00 pm)						
60	AB xxxx: Optimizing Efficiencies, Implementing Cost Control Measures, & Leveraging Tax Dollars	Jessi Bon, Chip Corder & Ali Spietz				
SPECIAL BUSINESS (7:00 pm)						
5	National Recovery Month Proclamation	Derek Franklin			Ali	
5	Peace Day on Mercer Island Proclamation	Diane Mortenson			Ali	
CONSENT CALENDAR						
PUBLIC HEARING						
REGULAR BUSINESS						
60	Proposed Commuter Parking & Mixed-Use Project Update [Placeholder]	Jessi Bon				
30	Q3 Sustainability Update [Placeholder]	Ross Freeman				
EXECUTIVE SESSION						

OCTOBER 1		DUE TO:	9/20 D/P	9/23 FN	9/23 CA	9/24 Clerk
ITEM TYPE TIME TOPIC		STAFF			SIGNER	
ABSENCES:						
STUDY SESSION (6:00-7:00 pm)						
SPECIAL BUSINESS (7:00 pm)						
5	Domestic Violence Action Month Proclamation	Derek Franklin			Ali	
CONSENT CALENDAR						
PUBLIC HEARING						

REGULAR BUSINESS			
EXECUTIVE SESSION			

OCTOBER 15		DUE TO:	10/4 D/P	10/7 FN	10/7 CA	10/8 Clerk
ABSENCES: Bon						
ITEM TYPE TIME TOPIC				STAFF		SIGNER
JOINT MEETING (6:00-7:00 pm)						
60	Joint Meeting with MISD Board (tentative)					
SPECIAL BUSINESS (7:00 pm)						
CONSENT CALENDAR						
PUBLIC HEARING						
REGULAR BUSINESS						
60	2019 Comprehensive Plan Amendments – First Reading			Evan Maxim		
EXECUTIVE SESSION						

NOVEMBER 5 (ELECTION DAY – TBD)		DUE TO:	10/25 D/P	10/28 FN	10/28 CA	10/29 Clerk
ABSENCES:						
ITEM TYPE TIME TOPIC				STAFF		SIGNER
STUDY SESSION (6:00-7:00 pm)						
SPECIAL BUSINESS (7:00 pm)						
	Veteran’s Day Proclamation			Ali Spietz		Julie
CONSENT CALENDAR						
	2019 Comprehensive Plan Amendments – Second Reading			Evan Maxim		
PUBLIC HEARING						
REGULAR BUSINESS						
	2020 Comprehensive Plan Amendment Docket			Evan Maxim		
EXECUTIVE SESSION						

NOVEMBER 19 ABSENCES:		DUE TO:	11/8 D/P	11/11 FN	11/11 CA	11/12 Clerk
ITEM TYPE TIME TOPIC			STAFF		SIGNER	
STUDY SESSION (6:00-7:00 pm)						
SPECIAL BUSINESS (7:00 pm)						
CONSENT CALENDAR						
PUBLIC HEARING						
60	2019-2020 Mid-Biennial Budget Review (Third Quarter 2019 Financial Status Report & 2019-2020 Budget Adjustments; NORCOM 2020 budget resolution; 2020 utility rate resolutions; and 2020 property tax ordinances)			Chip Corder		
REGULAR BUSINESS						
EXECUTIVE SESSION						

DECEMBER 3 ABSENCES:		DUE TO:	11/22 D/P	11/25 FN	11/25 CA	11/26 Clerk
ITEM TYPE TIME TOPIC			STAFF		SIGNER	
STUDY SESSION (6:00-7:00 pm)						
SPECIAL BUSINESS (7:00 pm)						
CONSENT CALENDAR						
PUBLIC HEARING						
REGULAR BUSINESS						
EXECUTIVE SESSION						

DECEMBER 17						
POTENTIALLY CANCELED						

OTHER ITEMS TO BE SCHEDULED:

- Process to Appoint Permanent City Manager
- Open Space Vegetation Management Report
- Comprehensive Mobility Plan (ST Settlement) – K. Taylor
- Utility Projects Update – J. Kintner

2020 Agenda Items:

- Hazard Mitigation Plan Approval
- Pavement 101 (Q1)
- Stormwater Dissolved Metals Testing Report (Q2)

– Pilot Project for Short-Term Commuter Parking – Z. Houvener

–

STATE/REGIONAL ISSUES:

– Initiative 976

– Vision 2050

– HB 1406 (Affordable Housing)

– King Conservation District Work Plan and Budget

– King County Parks Levy Renewal

– King County Medic One/EMS Levy Renewal

MISD BOARD JOINT MEETING DATES:

– Tuesday, October 15, 2019, 6-7 pm (tentative)

ANNUAL (ROUTINE) ITEMS:

Council/City Manager:

- Legislative Agenda (Q3 & Q4)
- City Council Annual Planning Session (Q1)
- Adoption of City Council Goals (Q2)
- City Council Mid-Year Planning Session (Q2)
- Sustainability Update (Q1 & Q3)
- Boards & Commissions Annual Appointments (Q2)

Community Planning and Development:

- ARCH Budget and Work Program (Q1)
- ARCH Trust Fund Recommendations (Q1)
- Code Amendment to Update School Impact Fees (Q3)
- Comprehensive Plan Amendments (Q4)
- Comprehensive Plan Docket (Q4)

Finance/Budget:

- Every Year:
 - General Fund & REET Surplus Disposition (Q2)
 - 4th Quarter Financial Status Report & Budget Adjustments (Q2)
 - 1st Quarter Financial Status Report & Budget Adjustments (Q2)
 - 2nd Quarter Financial Status Report & Budget Adjustments (Q3)
 - 3rd Quarter Financial Status Report & Budget Adjustments (Q4)
- Odd Years:
 - Mid-Biennial Budget Review (3rd Quarter Financial Status Report & Budget Adjustments, Utility Rates, and Property Tax Levy) (Nov Mtg)
- Even Years:
 - Capital Improvement Program (CIP) Budget Kick-Off (2nd Mar Mtg)
 - Operating Budget Kick-Off (Mid-Year PS)
 - Proposed Budget: Presentation & Distribution (1st Oct Mtg)
 - Proposed Budget: Operating Budget Review (2nd Oct Mtg)
 - Proposed Budget: Capital Improvement Program Review (1st Nov Mtg)
 - Proposed Budget: Finalize Changes & Adopt Tax Ordinances and Fee Resolutions (2nd Nov Mtg)
 - Final Budget Adoption (1st Dec Mtg)

Fire Department:

Human Resources:

- Police & Police Support Collective Bargaining Agreements
- Fire Collective Bargaining Agreement
- AFSCME Collective Bargaining Agreement

Parks & Recreation:

- Open Space Conservancy Trust Board Annual Report and Work Plan (Q2)
- Open Space Vegetation Management Report (Q2, every other year)

Public Works:

- Bid Awards & Project Close-Outs
- Public Hearing: Preview of 6-Year Transportation Improvement Program (Q2)
- Adoption of 6-Year Transportation Improvement Program (Q2)

Youth & Family Services:

- Interlocal Agreement with MISD for School Mental Health Counselors (Q3)

Proclamations:

- Martin Luther King Jr. Day (1st Jan)
- Black History Month (1st Feb)
- Women’s History Month & International Women’s Day (1st Mar)
- Sexual Assault Awareness Month (1st Apr)
- Safe Boating and Paddling Week (2nd May)
- Parks and Recreation Month (1st Jul)
- National Recovery Month (1st Sep)
- National Preparedness Month (1st Sep)
- Mayor’s Day of Concern for the Hungry (1st Sep)
- Peace Day on Mercer Island (September 18)
- Domestic Violence Action Month (1st Oct)
- Veteran’s Day (1st Nov)