

Ordinance No. 123135

Council Bill No. 116675

AN ORDINANCE relating to the use of premises under the jurisdiction of the Department of Parks and Recreation; authorizing the Superintendent of Seattle Parks and Recreation to enter into an agreement with King County for construction of a floating dock and use of a portion of real property at Seacrest Park for operation of the Elliott Bay Water Taxi.

CF No. _____

Date Introduced:	<u>10-5-09</u>		
Date 1st Referred:		To: (committee) <u>Parks + Seattle Center</u>	
Date Re - Referred:		To: (committee)	
Date Re - Referred:		To: (committee)	
Date of Final Passage:	<u>10-19-09</u>	Full Council Vote: <u>8-1</u>	
Date Presented to Mayor:	<u>10-20-09</u>	Date Approved: <u>10-27-09</u>	
Date Returned to City Clerk:	<u>10-27-09</u>	Date Published:	T.O. <u>2</u> F.T. <u>—</u>
Date Vetoed by Mayor:		Date Veto Published:	
Date Passed Over Veto:		Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: [Signature]
Councilmember

Committee Action:

10-9-07 Pass 2-0 TR, RC

10-19-09 Passed 8-1 (No - McIver)
AS
Amended
(E)

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review

OMP
Review

City Clerk
Review

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ORDINANCE 123135

AN ORDINANCE relating to the use of premises under the jurisdiction of the Department of Parks and Recreation; authorizing the Superintendent of Seattle Parks and Recreation to enter into an agreement with the King County Ferry District for construction of a floating dock and use of a portion of real property at Seacrest Park for operation of the Elliott Bay Water Taxi.

WHEREAS, the City of Seattle (City) operates and maintains a public dock, vehicle parking area and other facilities located at 1660 Harbor Avenue Southwest in West Seattle known as Seacrest Park (the "Park"); and

WHEREAS, the King County Ferry District (District) oversees operation of the Elliott Bay Water Taxi and King County operates the taxi on behalf of the District pursuant to a contract between the District and King County (County); and

WHEREAS, the County and the City have worked over the last 12 years to provide water taxi service from West Seattle to the downtown Seattle waterfront as a transportation alternative to the congested West Seattle bridge; and

WHEREAS, as part of its contribution to the Elliott Bay Water Taxi service the City has provided the public with access to and egress from the Elliott Bay Water Taxi Service by way of facilities at the Park for the past 12 years; and

WHEREAS, the current floating dock at Seacrest Park was built over 20 years ago and has reached the end of its useful life; and

WHEREAS, in lieu of payment of a fee for the use of Seacrest Park, the District will construct a replacement floating dock at the Park; and

WHEREAS, the agreement for the District's use of the replacement dock will be for a five-year period, that can be extended for up five additional one-year periods; and

WHEREAS, the improvements to Seacrest Park will be the property of the City of Seattle, Department of Parks and Recreation and will remain the City's property when the District establishes a permanent Elliott Bay Water Taxi docking site in West Seattle; and

WHEREAS, the District shall continue taking the necessary steps to plan for and build a permanent docking facility in West Seattle to support the Water Taxi service; NOW
THEREFORE

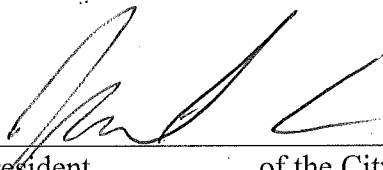


BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS

Section 1. The Superintendent of Seattle Department of Parks and Recreation (the "Superintendent") is hereby authorized to enter into an agreement substantially in the form of Attachment 1 to this ordinance. The Superintendent is further authorized to make minor deletions and revisions so long as the Superintendent determines that the revisions are for accuracy and are in the best interest of the City.

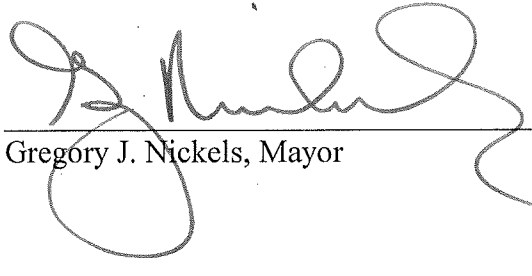
Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 19th day of October, 2009, and signed by me in open session in authentication of its passage this 19th day of October, 2009.



President _____ of the City Council


Approved by me this 27th day of October, 2009.



Gregory J. Nickels, Mayor



Filed by me this 27th day of October, 2009.


City Clerk

(Seal)

Attachment 1: Dock Construction and License Agreement

Appendix A to Attachment 1: Site Plan

Appendix B to Attachment 1: Description of Improvements and Dock Plan



DOCK CONSTRUCTION AND LICENSE AGREEMENT

THIS AGREEMENT is made by and between **The City of Seattle**, a first class city of the State of Washington, hereinafter called "the City," and **King County Ferry District**, a municipal corporation organized under the authority of RCW 36.54.110 hereinafter called "the District."

AGREEMENT

In consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. **Premises:** Upon the following terms and conditions, the City agrees to permit the District, in particular the Marine Division of King County, and their officers, officials, employees, agents, consultants and contractors, to use the Premises, located in King County, Washington, and comprising, as of the Commencement Date of this Agreement, a floating dock at Seacrest marina and upland areas as depicted generally on the site plan attached as **Appendix A** and incorporated herein. The Premises are located on a portion of the real property commonly known as Seacrest Park, 1660 Harbor Avenue Southwest in Seattle, Washington, and having the following legal description:

SEATTLE TIDE LANDS EXT #1 TOGETHER WITH BLOCKS 448A & 449 & 449A SD ADD & VACATED STREET ADJOINING – TOGETHER WITH LOTS 1 & 2 & NORTHWESTERLY 37 FEET OF LOT 3 BLOCK 445 & LOTS 1 & 2 & NORTHWESTERLY 37 FT OF BLOCK 445A SD ADDITION TOGETHER WITH POR GL 1 ADJ LOTS 3 & 4 BLK 449A ONE & LYING WITHIN WATER WAY IF ANY.

2. **Term:** This Agreement's term shall be five (5) years, commencing on _____, 2009 ("Commencement Date") and ending on _____, 2014, unless terminated sooner as provided herein. The District has the right to extend this Agreement on the same terms and conditions (except that there shall be no additional extension options) for up to five (5) additional one-year periods, upon written notice to the City at least ninety (90) calendar days prior to expiration of the initial Agreement term or an extended Agreement term.

3. **Consideration:**

In lieu of payment of a fee for the use of the Premises, the District shall contract for the construction of the improvements described in Section 7 below and Appendix B hereto (the "Improvements").



4. **Use of Premises:** The District shall use the Premises solely for the docking, and the loading and unloading of passengers to and from a passenger-only water taxi operated by the District or its contractor, and purposes incidental thereto. The District will notify and reach agreement with the City on the size of the watercraft that will be used at the Premises when such information becomes available to the District. Except as provided below, the District shall have shared use of the Premises with the public; provided that no other uses shall unreasonably interfere with the District's permitted use of the Premises. The District shall have exclusive use of the dock space along the "T" section at the southerly end of the dock (as depicted on the Appendices hereto) used to moor the water taxi vessel during the water taxi's hours of operation. The District shall provide appropriate signage to demarcate this section of the dock. The District shall possess all rights necessary for its passengers to access and use the dock, including the rights of ingress and egress and the nonexclusive right to use Seacrest Park in common with the public.

5. **Utilities:** The City shall maintain, at its sole expense, all utilities presently serving the Premises. Any additional utility services necessary for water taxi operations shall be the District's sole responsibility.

6. **Signs and Markings:** In addition to the demarcation signage described in Section 4 above, the District may install, at its own expense, its usual and customary signs identifying the Premises as a facility used by the District for its service, including, but not limited to sailing schedule, warning signs, and directional and circulation signs, and markings. All signs and markings shall be approved by the City prior to posting and removed by the District upon termination of this Agreement.

7. **District Improvements:**

A. The District will cause the Improvements to be installed at its sole expense and in accordance with good engineering practices, all applicable laws and rules and the terms of this Agreement and in accordance with plans and specifications approved by the City. The City shall not unreasonably withhold approval of such Improvements. The Improvements shall be the property of the City upon the District's acceptance of the Improvements and shall remain on the Premises at the expiration or termination of this Agreement.

B. Any future improvements that the District wishes to make shall be done at the District's expense and according to plans approved by the City. The District shall provide the City reasonable opportunity and time to fully review, comment on, and request reasonable modifications to all such plans. The City shall not unreasonably withhold approval of such improvements.



C. The District shall be responsible for repairing or correcting any design or construction defects in the Improvements that are discovered within two years from the completion of construction of the Improvements (the "Warranty Period"). After the Warranty Period, if circumstances arise that would permit a claim against any person or entity involved in the design or construction of the Improvements, then the District agrees to assign such claim to the City and to fully cooperate with the City in the investigation and City's prosecution of the claim.

8. **Maintenance and Repairs:** Unless otherwise agreed to in writing by the City and the District, the City shall be responsible for all costs associated with the maintenance and repair of the Premises and Improvements, other than maintenance and repair of signs and markings installed by the District. The District shall be responsible for and shall repair any damage, except ordinary wear and tear, to the "T" section at the southerly end of the dock (as depicted on **Appendix B** hereto) caused by its operation of the water taxi service. The City shall maintain the Premises and the Improvements to the same standards as other similar park facilities and in a condition that allows for the District's exercise of its rights under this Agreement. The District shall notify the City if it becomes aware of any condition of the Premises or Improvements requiring repair. The District's obligations relating only to repairing or correcting any design or construction defects in the Improvements that are discovered during the Warranty Period shall survive the expiration or termination of this Agreement.

The City will provide the District with two (2) weeks' advance notice of routine maintenance and routine repairs and the schedule for such maintenance and coordinate such work with the District to minimize the potential impacts the work will have on operations of the water taxi and on water taxi customers. Emergency repairs will not require advance notification to the District. Subject to the foregoing, repair work shall begin without delay and continue without interruption until completed. If damage is extensive, the time allowed for repair will be agreed upon by the parties. If a party believes that the other party is not performing any necessary and required maintenance and repairs, then, after having given notice to the other party and a reasonable amount of time to address the damage or condition of the Premises, in addition to other remedies provided herein, the party may invoke the dispute resolution procedures described in Section 18.

9. **Annual Inspection:** Annually throughout the Term, on a date agreed upon by the parties, the City and the District shall jointly inspect the Premises.

10. **Liens:** The District shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by the District.

11. **Hazardous Substances:**

A. The City and the District covenant that during the Agreement term, they or their agents, contractors or other licensees shall not handle, use, store, generate or dispose



of any hazardous substances regulated under any State or federal law or regulation at or upon the Premises, except for such hazardous substances reasonably necessary for the operation, maintenance and authorized uses of the Premises, in which event, each party shall handle, use, store, generate or dispose of such hazardous substances in compliance with all applicable laws, ordinances, rules and regulations.

12. Mutual Indemnification and Hold Harmless: Each party shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments and/or awards of damages, of whatsoever kind arising out of, in connection with or incident to the rights and obligations associated with this Agreement caused by or resulting from such party's own negligent, reckless or willful acts or omissions, including the violation of any environmental law. Each party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents; provided that neither party is responsible for the acts and omissions of water taxi passengers or the general public. Each party agrees that its obligations under this provision extend to any claim, demand and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them. This indemnity and hold harmless provision shall survive the expiration of this Agreement and apply to the maximum extent permitted by law including, if applicable, as defined by RCW 4.24.115, now enacted or as hereinafter amended.

13. Insurance: The City acknowledges, agrees and understands that as of the date of this Agreement, the District has obtained insurance coverage through the Washington Governmental Entity Pool as authorized by Ferry District Resolution No. 2008-7.1 and, as of the date of this agreement, maintains marine liability insurance as described in Ferry District Resolution No. 2008-10.1. The District agrees to maintain throughout the term of this Agreement, at its sole expense, the same or substantially similar types of insurance coverages as are in effect as of the date of this Agreement, with at least the same minimum limits of liability. The District agrees to provide the City with at least thirty (30) days' prior written notice of any change in the District's insurance program and will provide the City with such proof of insurance as the City may request from time to time.

The District acknowledges, agrees and understands that the City is self-insured for all of its liability exposures. The City agrees, at its own expense, to maintain through its self-insurance program coverage for its liability exposures for the duration of this Agreement. The City agrees to provide the District with at least thirty (30) days' prior



written notice of any change in the City's self-insured status and will provide the District with the letter of self-insurance as adequate proof of insurance, upon the District's request.

14. Suspension or Termination: This Section is in addition to any other provision of this Agreement authorizing or otherwise relating to its early termination.

A. If there is any condition that would cause the Premises or the Improvements to be unusable for the purposes of this Agreement if not repaired and the repairs exceed the City's available resources, therefore, the parties shall commence the dispute resolution process described in Paragraph 18 within 72 hours of the City's determination in order to resolve any outstanding issues.

B. This Agreement is contingent upon the District obtaining all necessary governmental approvals, certificates, permits or licenses which are required by law and/or the District may deem necessary. In the event that any of the District's applications for said approvals, certificates, permits or licenses should be rejected or any approval, certificate, permit or license issued to the District is canceled or otherwise withdrawn or terminated by a governmental authority so that the District will be unable to use the Premises for its intended purpose, the District shall have the right to terminate this Agreement, upon thirty (30) calendar days' prior written notice to the City.

C. In the event that the Premises or the District's facilities or any portion thereof are condemned or substantially damaged or destroyed so as to hinder effective use of any portion of the Premises or any of the District's facilities for passenger-only water taxi purposes, the District may elect to terminate this Agreement, upon thirty (30) calendar days' written notice to the City.

D. The District may terminate this Agreement for its convenience at any time by providing sixty (60) calendar days' advance written notice to the City.

E. The District may terminate this Agreement if the City breaches or fails to perform or observe any of the terms and/or conditions of this Agreement, and fails to cure such breach or default within thirty (30) calendar days after written notice from the District or such longer period, up to sixty (60) calendar days, as may be reasonably required to diligently complete a cure commenced within that thirty (30) calendar day period and being diligently and continuously pursued by the City.

F. The City may terminate this Agreement if the District breaches or fails to perform or observe any of the terms and/or conditions of this Agreement, and fails to cure such breach or default within thirty (30) calendar days after written notice from the City or such longer period, up to sixty (60) calendar days, as may be reasonably required to diligently complete a cure commenced within that thirty (30) calendar day period and being



diligently and continuously pursued by the District. Prior to the City's termination, both parties shall undertake the dispute resolution process described in Paragraph 18.

G. The City shall notify the District should the State of Washington adopt any law or regulation or take any other action that affects the City's or the District's right to use and occupy all or any portion of the Premises, or imposes any fee for such use and occupation or for operation of the water taxi that exceeds the fee the City is paying the State as of the Commencement Date. If the City and the District are both willing to comply with such laws, regulations or other actions, and the District is willing to pay all or such portion of the fee increase that is related to the District's use and occupation of the Premises or the District's operation of the water taxi, then the parties shall document such agreement in a written amendment to this Agreement. If the parties are unable to reach an agreement, they shall promptly undertake the dispute resolution process described in Paragraph 18. If the parties are unable to reach agreement through the dispute resolution process, the City may terminate this Agreement thirty (30) days after completion of the dispute resolution process.

H. Unless otherwise specified in this Agreement, prior written notice of termination shall be delivered by certified mail, return receipt requested, and shall be effective upon receipt of such notice, as evidenced by the return receipt.

I. Termination under this Section shall be in addition to and not in limitation of any other remedy at law or in equity.

15. Surrender of Premises: At the end of the term of this Agreement or any extension or hold-over thereof or other termination of this Agreement, the District shall peaceably deliver up to the City possession of the Premises. The Premises will be surrendered "as is" with no warranties regarding the condition of the Premises or the Improvements.

16. Subcontracting and Assignment: The District shall not sublicense the Premises nor subcontract or assign this Agreement or any interest therein, to any person, without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

17. Non-Discrimination: The City and the District shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age or the presence of any sensory, mental or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits associated with this Agreement. The City and the District shall comply fully with all applicable federal, State and local laws, executive orders, and regulations which prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 of the Revised Code of Washington, Titles VI and VII of the Civil Rights Act of 1964, and Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC).



18. **Disputes:** The parties agree to endeavor to make reasonable accommodations with regard to the Premises and to work together cooperatively to resolve problems that may arise from time to time. In the event of a dispute regarding this Agreement, the parties agree to follow the procedures in this Section prior to filing or initiating a lawsuit. The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the City's Superintendent of Parks and Recreation and the District's Executive Director. If those officials are unable to resolve the dispute within a period of fifteen (15) calendar days after the matter has been formally referred to them for resolution (or within 48 hours, if the matter is one that will immediately affect water taxi service), they shall meet during the immediately succeeding seven (7) calendar days (or 1 calendar day, if the matter is one that will immediately affect water taxi service) to select a mediator to assist in the resolution of such dispute. The District and the City agree to participate in mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally between the parties.

19. **Agents, Successors and Assigns:** All of the agreements, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, agents and assigns of the City and the District.

20. **Notices:** Subject to Section 14(H) (Early Termination) of this Agreement, required notices, except legal notices, shall be given in writing to the following respective addresses, effective as of the post-mark time and date, or to such other place as may hereafter be designated by either party in writing:

If to the CITY, to:

Seattle Parks and Recreation
c/o Superintendent
100 Dexter Avenue North
Seattle, Washington 98109-5199

If to the DISTRICT, to:

King County Department of Transportation
Marine Division
201 South Jackson Street, KSC-TR-0816
Seattle, Washington 98104-3856

21. **Compliance with all Laws and Regulations:** The District's use of the Premises shall be contingent upon it obtaining all certificates, permits, zoning and other approvals which may be required by any federal, State or local authority. The District shall use the Premises, as authorized herein, in compliance with all applicable laws and regulations, now in effect or which may become effective hereafter by any federal, State or local authority.



22. **No Presumption Against Drafter:** The City and the District understand, agree and acknowledge that this Agreement has been freely negotiated by both parties and that in the event of any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

23. **Captions:** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of the Agreement.

24. **Venue and Choice of Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any legal action brought under the terms of this Agreement shall be in the county in which the Premises are located.

25. **Authority to Contract:** Each party represents and warrants to the other that: it has full right, power and authority to execute this Agreement and has the power to grant all rights hereunder, its execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, agreement or other agreement binding on said party, and the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary personnel or corporate officers and do not violate any provisions of law or the party's certificate of incorporation or bylaws or any other arrangement, provision of law or court order or decree.

26. **Appendices:** The following exhibits are attached hereto and incorporated herein by reference:

- A. Site Plan
- B. Description of Improvements and Dock Plan

27. **Entire Agreement - Amendments:** This Agreement and any and all exhibits attached hereto constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.



28. **Severability:** The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or void and such other provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the City and the District have executed this Agreement on the dates specified below.

CITY OF SEATTLE, WASHINGTON:

KING COUNTY FERRY DISTRICT

By: _____
Name: _____
Title: _____

By: _____
Name: Dow Constantine
Title: Chair of the Ferry District

Date: _____

Date: _____

APPROVED AS TO FORM ONLY:

By: _____

Rod Kaseguma

Date: _____



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 he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of _____ to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington
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 he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of _____ to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington
Commission Expires: _____



28. **Severability:** The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or void and such other provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the City and the District have executed this Agreement on the dates specified below.

CITY OF SEATTLE, WASHINGTON: KING COUNTY FERRY DISTRICT

By: _____
Name: _____
Title: _____

By: _____
Name: Dow Constantine
Title: Chair of the Ferry District

Date: _____

Date: _____

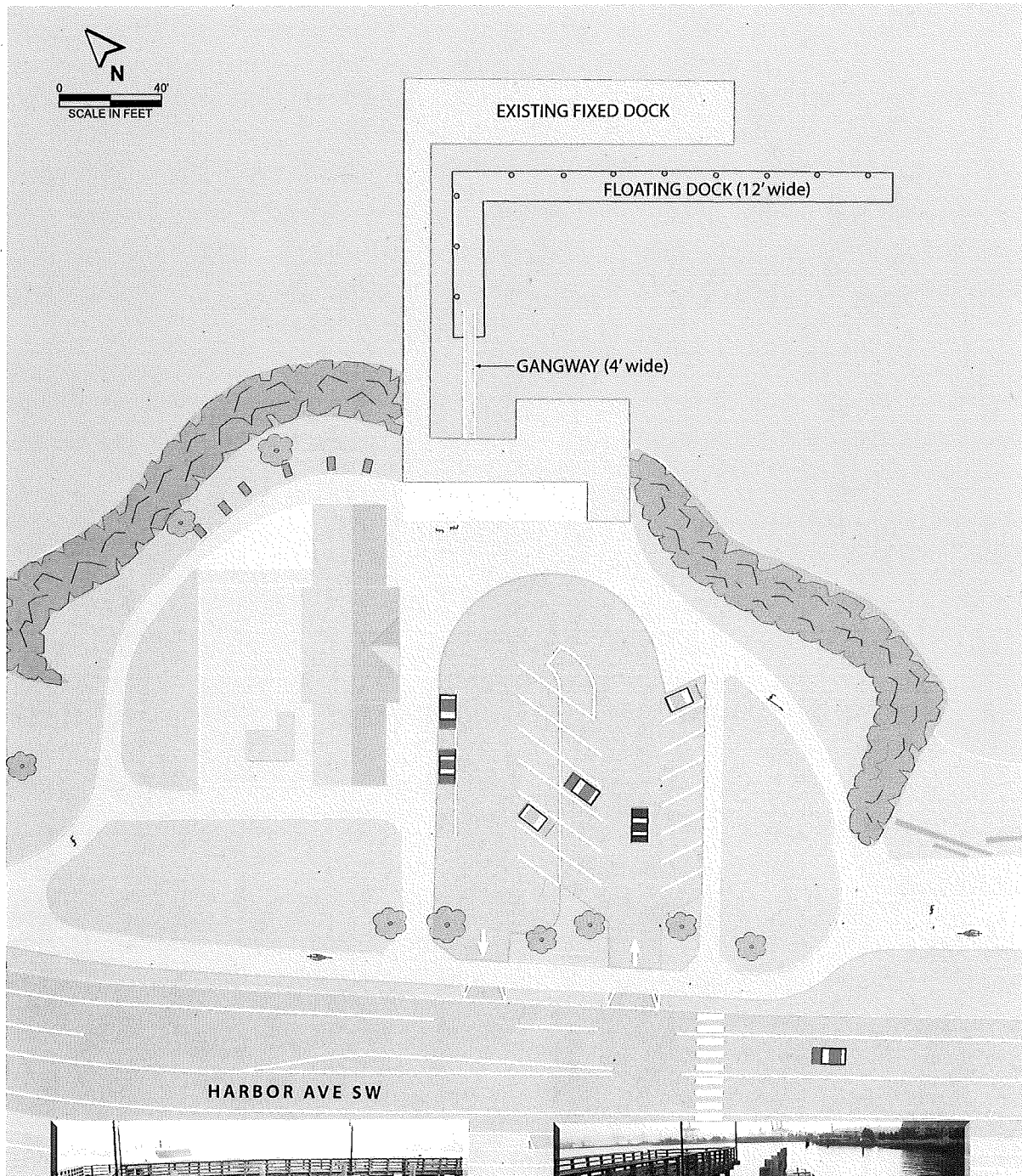
APPROVED AS TO FORM ONLY:

By: _____

Rod Kaseguma

Date: _____





EXISTING GANGWAY














EXISTING FLOATING DOCK

Elliott Bay Water Taxi **Seacrest Dock Replacement Project** **Existing Site**

Parametrix
INCORPORATED



- 1 BOTTOM OF SEA FLOOR ELEVATION
APPROXIMATELY $-20'$, ($-18'$ MLLW).
- 2 BOTTOM OF SEA FLOOR ELEVATION
APPROXIMATELY $-33'$, ($-31'$ MLLW).
- 3 7 PROPOSED 16" DIAMETER PILES, CONCRETE
FILLED.
- 4 4 PROPOSED 24" DIAMETER PILES, CONCRETE
FILLED.
- 5 PROPOSED ALUMINUM GANGWAY.
- 6 PROPOSED DOCK, FLOAT "A", ($32' \times 10'$).
- 7 PROPOSED DOCK, FLOAT "B", ($110' \times 10'$).
- 8 PROPOSED DOCK, FLOAT "C", ($70' \times 15'$).
- 9 PROPOSED KAYAK PIER.

 EXISTING FIXED DOCK
 EXISTING GRASS
 EXISTING CONCRETE
 EXISTING RIP RAP
 PROPOSED DOCK
 PROPOSED GANGWAY
 FOUND MONUMENT
 STORM MANHOLE
 EXISTING PILING
 PROPOSED 16" PILING
 PROPOSED 24" PILING

DOCK & PILING DATA	
EXISTING PILES	(11) 16"
EXISTING DOCK	2686 SF
EXISTING KAYAK PLATFORM	36 SF
TOTAL EXISTING COVERAGE	2722 SF
PROPOSED PILES	(7) 16" & (4) 24"
PROPOSED DOCK	2470 SF
PROPOSED KAYAK PLATFORM	195 SF
TOTAL PROPOSED COVERAGE	2665 SF

ELEVATION INFORMATION		
		NAVDD88
		MLLW
OBSERVED	HIGH	12.14'
MHHW		9.02'
MHW		8.15'
MLLW		-2.34'
OBSERVED	LOW	-7.50'
		0'

PROPOSED SITE PLAN

PROJECT NAME
Seacrest Floating Dock and Pile Replacement
KING COUNTY DOT - MARINE DIVISION

Parametrix
2001 HYPER AVENUE
SUNNYVALE, CALIFORNIA 94088
TEL: 925.933.1000 FAX: 925.933.1000



ONE INCH AT FULL SCALE
IF NOT, SCALE ACCORDINGLY

FILE NAME
SU1521087P05T03-3

JOB No. 1574-007

	REVISIONS	DATE	BY	DESIGNED D. AUVIL
				DRAWN D. AUVIL
				CHECKED
				APPROVED

Appendix B-1

DOCK & PILING DATA	
EXISTING DOCK	2650 SF
EXISTING PILES	(11) 16"
PROPOSED DOCK	2470 SF
PROPOSED PILES	(7) 16" & (4) 24"
KAYAK PLATFORM	195 SF

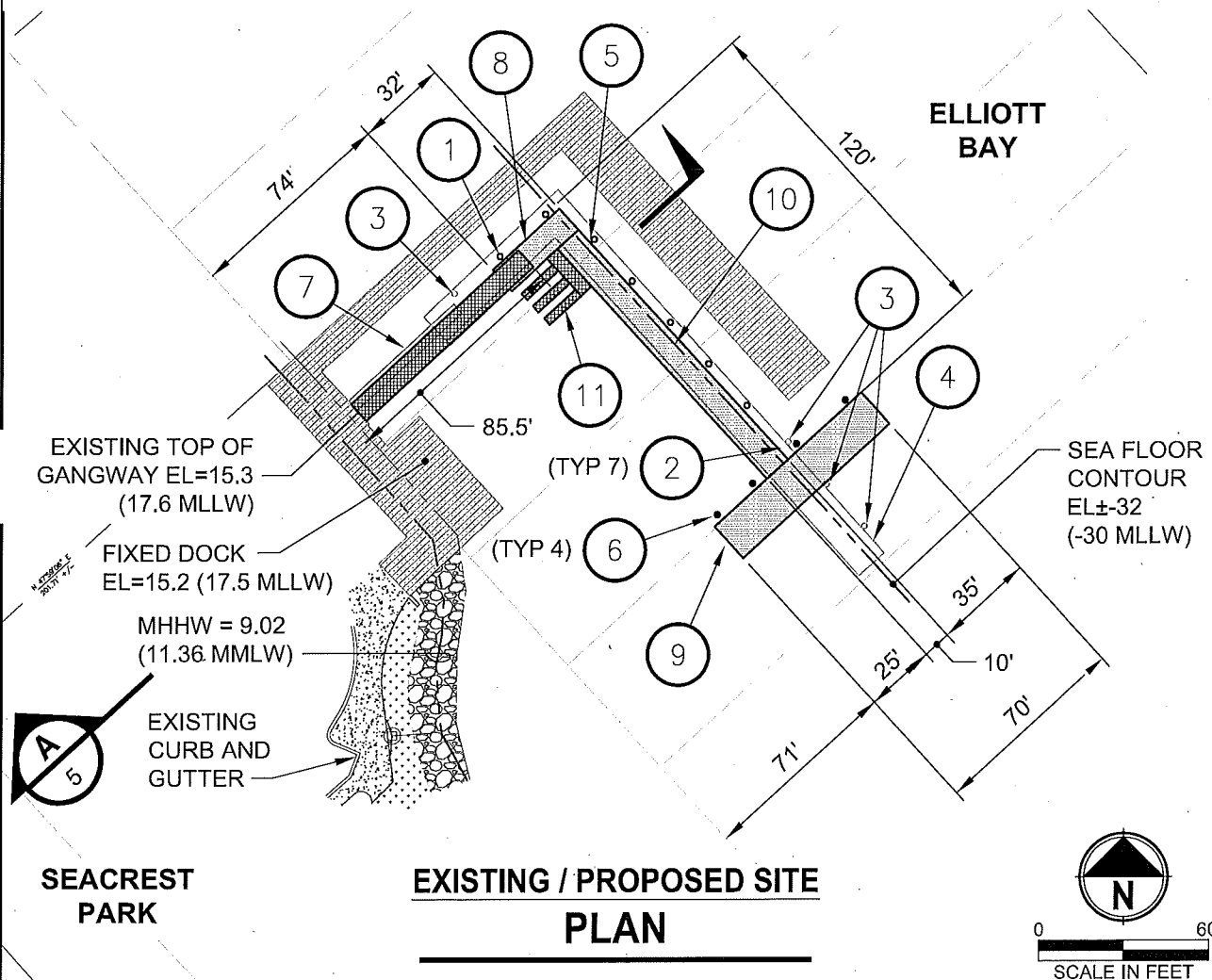
ELEVATION INFORMATION		
	NAVD88	MLLW
OBSERVED HIGH	12.14'	14.48'
MHHW	9.02'	11.36'
MHW	8.15'	10.49'
MLLW	-2.34'	0
OBSERVED LOW	-7.38'	-5.04'

LEGEND:

	PROPOSED DOCK		FOUND MONUMENT
	PROPOSED GANGWAY		STORM MANHOLE
	EXISTING FIXED DOCK		EXISTING PILING
	EXISTING GRASS		PROPOSED 16" PILING
	EXISTING CONCRETE		PROPOSED 24" PILING
	EXISTING RIP RAP		

KEY NOTES:

1. SEE SHEET 3 OF 3 FOR KEY NOTES.



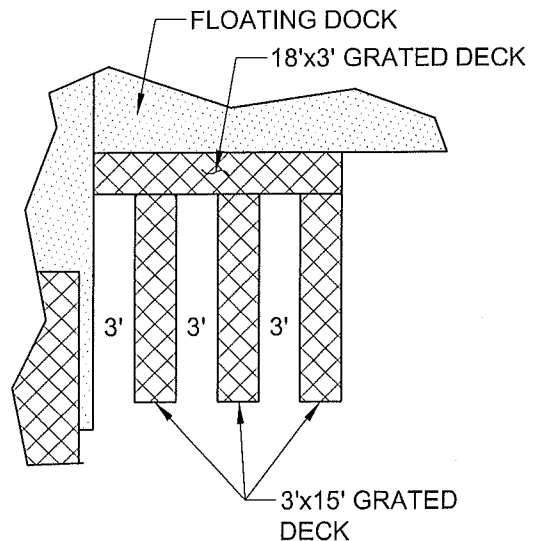
Parametrix 1231 FRYAR AVENUE SUMNER, WASHINGTON 98390 T. 253.863.5128 F. 253.863.0946 www.parametrix.com	DATE: Feb 12, 2009 FILE: SU1521067P05T03C-2	
	KING COUNTY ELLIOTT BAY WATER TAXI SEACREST FLOATING DOCK REPLACEMENT	
	APPLICATION: REPAIR/MAINT.	
	DATE: FEB 12, 2009	
SHEET NO: 3 OF 5		



Appendix B-2

KEY NOTES:

- 1 BOTTOM OF SEA FLOOR ELEV. APPROX. -20', (-18' MLLW).
- 2 BOTTOM OF SEA FLOOR ELEV. APPROX. -33', (-31' MLLW).
- 3 REMOVE FOUR EXISTING PILES.
- 4 REMOVE EXISTING DOCK.
- 5 REPLACE EXISTING 16" PILES WITH 7-16" DIA PILES, CONCRETE FILLED.
- 6 4 PROPOSED 24" DIAx1" WALL PIPE PILES, CONCRETE FILLED.
- 7 PROPOSED ALUMINUM GANGWAY WITH GRATED WALKWAY, (80'x8').
- 8 PROPOSED DOCK, FLOAT "A", (32'x10').
- 9 PROPOSED DOCK, FLOAT "B", (110'x10').
- 10 PROPOSED DOCK, FLOAT "C", (70'x15').
- 11 PROPOSED KAYAK PIERS, SEE DETAIL THIS SHEET.



KAYAK PIERS DETAIL

NO SCALE

DATE: Feb 11, 2009 FILE: SU1521067P05T03C-2

Parametrix

1231 FRYAR AVENUE
SUMNER, WASHINGTON 98390
T. 253.863.5128 F. 253.863.0946
www.parametrix.com

KING COUNTY ELLIOTT BAY WATER TAXI SEACREST FLOATING DOCK REPLACEMENT

APPLICATION:
REPAIR/MAINT.

DATE:
FEB 12, 2009

SHEET NO: 4 OF 5



FILED
CITY OF SEATTLE
09 NOV 30 PM 2:29
CITY CLERK

DOCK CONSTRUCTION AND LICENSE AGREEMENT

THIS AGREEMENT is made by and between **The City of Seattle**, a first class city of the State of Washington, hereinafter called "the City," and **King County Ferry District**, a municipal corporation organized under the authority of RCW 36.54.110 hereinafter called "the District."

AGREEMENT

In consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. **Premises:** Upon the following terms and conditions, the City agrees to permit the District, in particular the Marine Division of King County, and their officers, officials, employees, agents, consultants and contractors, to use the Premises, located in King County, Washington, and comprising, as of the Commencement Date of this Agreement, a floating dock at Seacrest marina and upland areas as depicted generally on the site plan attached as **Appendix A** and incorporated herein. The Premises are located on a portion of the real property commonly known as Seacrest Park, 1660 Harbor Avenue Southwest in Seattle, Washington, and having the following legal description:

SEATTLE TIDE LANDS EXT #1 TOGETHER WITH BLOCKS 448A & 449
& 449A SD ADD & VACATED STREET ADJOINING – TOGETHER WITH
LOTS 1 & 2 & NORTHWESTERLY 37 FEET OF LOT 3 BLOCK 445 & LOTS
1 & 2 & NORTHWESTERLY 37 FT OF BLOCK 445A SD ADDITION
TOGETHER WITH POR GL 1 ADJ LOTS 3 & 4 BLK 449A ON E & LYING
WITHIN WATER WAY IF ANY.

2. **Term:** This Agreement's term shall be five (5) years, commencing on November 1, 2009 ("Commencement Date") and ending on November 1, 2014, unless terminated sooner as provided herein. The District has the right to extend this Agreement on the same terms and conditions (except that there shall be no additional extension options) for up to five (5) additional one-year periods, upon written notice to the City at least ninety (90) calendar days prior to expiration of the initial Agreement term or an extended Agreement term.

3. **Consideration:**

In lieu of payment of a fee for the use of the Premises, the District shall contract for the construction of the improvements described in Section 7 below and Appendix B hereto (the "Improvements").

4. **Use of Premises:** The District shall use the Premises solely for the docking, and the loading and unloading of passengers to and from a passenger-only water taxi operated by the District or its contractor, and purposes incidental thereto. The District will notify and reach agreement with the City on the size of the watercraft that will be used at the Premises when such information becomes available to the District. Except as provided below, the District shall have shared use of the Premises with the public; provided that no other uses shall unreasonably interfere with the District's permitted use of the Premises. The District shall have exclusive use of the dock space along the "T" section at the southerly end of the dock (as depicted on the Appendices hereto) used to moor the water taxi vessel during the water taxi's hours of operation. The District shall provide appropriate signage to demarcate this section of the dock. The District shall possess all rights necessary for its passengers to access and use the dock, including the rights of ingress and egress and the nonexclusive right to use Seacrest Park in common with the public.

5. **Utilities:** The City shall maintain, at its sole expense, all utilities presently serving the Premises. Any additional utility services necessary for water taxi operations shall be the District's sole responsibility.

6. **Signs and Markings:** In addition to the demarcation signage described in Section 4 above, the District may install, at its own expense, its usual and customary signs identifying the Premises as a facility used by the District for its service, including, but not limited to sailing schedule, warning signs, and directional and circulation signs, and markings. All signs and markings shall be approved by the City prior to posting and removed by the District upon termination of this Agreement.

7. **District Improvements:**

A. The District will cause the Improvements to be installed at its sole expense and in accordance with good engineering practices, all applicable laws and rules and the terms of this Agreement and in accordance with plans and specifications approved by the City. The City shall not unreasonably withhold approval of such Improvements. The Improvements shall be the property of the City upon the District's acceptance of the Improvements and shall remain on the Premises at the expiration or termination of this Agreement.

B. Any future improvements that the District wishes to make shall be done at the District's expense and according to plans approved by the City. The District shall provide the City reasonable opportunity and time to fully review, comment on, and request reasonable modifications to all such plans. The City shall not unreasonably withhold approval of such improvements.

C. The District shall be responsible for repairing or correcting any design or construction defects in the Improvements that are discovered within two years from the completion of construction of the Improvements (the "Warranty Period"). After the Warranty Period, if circumstances arise that would permit a claim against any person or entity involved in the design or construction of the Improvements, then the District agrees to assign such claim to the City and to fully cooperate with the City in the investigation and City's prosecution of the claim.

8. **Maintenance and Repairs:** Unless otherwise agreed to in writing by the City and the District, the City shall be responsible for all costs associated with the maintenance and repair of the Premises and Improvements, other than maintenance and repair of signs and markings installed by the District. The District shall be responsible for and shall repair any damage, except ordinary wear and tear, to the "T" section at the southerly end of the dock (as depicted on **Appendix B** hereto) caused by its operation of the water taxi service. The City shall maintain the Premises and the Improvements to the same standards as other similar park facilities and in a condition that allows for the District's exercise of its rights under this Agreement. The District shall notify the City if it becomes aware of any condition of the Premises or Improvements requiring repair. The District's obligations relating only to repairing or correcting any design or construction defects in the Improvements that are discovered during the Warranty Period shall survive the expiration or termination of this Agreement.

The City will provide the District with two (2) weeks' advance notice of routine maintenance and routine repairs and the schedule for such maintenance and coordinate such work with the District to minimize the potential impacts the work will have on operations of the water taxi and on water taxi customers. Emergency repairs will not require advance notification to the District. Subject to the foregoing, repair work shall begin without delay and continue without interruption until completed. If damage is extensive, the time allowed for repair will be agreed upon by the parties. If a party believes that the other party is not performing any necessary and required maintenance and repairs, then, after having given notice to the other party and a reasonable amount of time to address the damage or condition of the Premises, in addition to other remedies provided herein, the party may invoke the dispute resolution procedures described in Section 18.

9. **Annual Inspection:** Annually throughout the Term, on a date agreed upon by the parties, the City and the District shall jointly inspect the Premises.

10. **Liens:** The District shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by the District.

11. **Hazardous Substances:**

A. The City and the District covenant that during the Agreement term, they or their agents, contractors or other licensees shall not handle, use, store, generate or dispose

of any hazardous substances regulated under any State or federal law or regulation at or upon the Premises, except for such hazardous substances reasonably necessary for the operation, maintenance and authorized uses of the Premises, in which event, each party shall handle, use, store, generate or dispose of such hazardous substances in compliance with all applicable laws, ordinances, rules and regulations.

12. Mutual Indemnification and Hold Harmless: Each party shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments and/or awards of damages, of whatsoever kind arising out of, in connection with or incident to the rights and obligations associated with this Agreement caused by or resulting from such party's own negligent, reckless or willful acts or omissions, including the violation of any environmental law. Each party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents; provided that neither party is responsible for the acts and omissions of water taxi passengers or the general public. Each party agrees that its obligations under this provision extend to any claim, demand and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them. This indemnity and hold harmless provision shall survive the expiration of this Agreement and apply to the maximum extent permitted by law including, if applicable, as defined by RCW 4.24.115, now enacted or as hereinafter amended.

13. Insurance: The City acknowledges, agrees and understands that as of the date of this Agreement, the District has obtained insurance coverage through the Washington Governmental Entity Pool as authorized by Ferry District Resolution No. 2008-7.1 and, as of the date of this agreement, maintains marine liability insurance as described in Ferry District Resolution No. 2008-10.1. The District agrees to maintain throughout the term of this Agreement, at its sole expense, the same or substantially similar types of insurance coverages as are in effect as of the date of this Agreement, with at least the same minimum limits of liability. The District agrees to provide the City with at least thirty (30) days' prior written notice of any change in the District's insurance program and will provide the City with such proof of insurance as the City may request from time to time.

The District acknowledges, agrees and understands that the City is self-insured for all of its liability exposures. The City agrees, at its own expense, to maintain through its self-insurance program coverage for its liability exposures for the duration of this Agreement. The City agrees to provide the District with at least thirty (30) days' prior

written notice of any change in the City's self-insured status and will provide the District with the letter of self-insurance as adequate proof of insurance, upon the District's request.

14. Suspension or Termination: This Section is in addition to any other provision of this Agreement authorizing or otherwise relating to its early termination.

A. If there is any condition that would cause the Premises or the Improvements to be unusable for the purposes of this Agreement if not repaired and the repairs exceed the City's available resources therefor, the parties shall commence the dispute resolution process described in Paragraph 18 within 72 hours of the City's determination in order to resolve any outstanding issues.

B. This Agreement is contingent upon the District obtaining all necessary governmental approvals, certificates, permits or licenses which are required by law and/or the District may deem necessary. In the event that any of the District's applications for said approvals, certificates, permits or licenses should be rejected or any approval, certificate, permit or license issued to the District is canceled or otherwise withdrawn or terminated by a governmental authority so that the District will be unable to use the Premises for its intended purpose, the District shall have the right to terminate this Agreement, upon thirty (30) calendar days' prior written notice to the City.

C. In the event that the Premises or the District's facilities or any portion thereof are condemned or substantially damaged or destroyed so as to hinder effective use of any portion of the Premises or any of the District's facilities for passenger-only water taxi purposes, the District may elect to terminate this Agreement, upon thirty (30) calendar days' written notice to the City.

D. The District may terminate this Agreement for its convenience at any time by providing sixty (60) calendar days' advance written notice to the City.

E. The District may terminate this Agreement if the City breaches or fails to perform or observe any of the terms and/or conditions of this Agreement, and fails to cure such breach or default within thirty (30) calendar days after written notice from the District or such longer period, up to sixty (60) calendar days, as may be reasonably required to diligently complete a cure commenced within that thirty (30) calendar day period and being diligently and continuously pursued by the City.

F. The City may terminate this Agreement if the District breaches or fails to perform or observe any of the terms and/or conditions of this Agreement, and fails to cure such breach or default within thirty (30) calendar days after written notice from the City or such longer period, up to sixty (60) calendar days, as may be reasonably required to diligently complete a cure commenced within that thirty (30) calendar day period and being

diligently and continuously pursued by the District. Prior to the City's termination, both parties shall undertake the dispute resolution process described in Paragraph 18.

G. The City shall notify the District should the State of Washington adopt any law or regulation or take any other action that affects the City's or the District's right to use and occupy all or any portion of the Premises, or imposes any fee for such use and occupation or for operation of the water taxi that exceeds the fee the City is paying the State as of the Commencement Date. If the City and the District are both willing to comply with such laws, regulations or other actions, and the District is willing to pay all or such portion of the fee increase that is related to the District's use and occupation of the Premises or the District's operation of the water taxi, then the parties shall document such agreement in a written amendment to this Agreement. If the parties are unable to reach an agreement, they shall promptly undertake the dispute resolution process described in Paragraph 18. If the parties are unable to reach agreement through the dispute resolution process, the City may terminate this Agreement thirty (30) days after completion of the dispute resolution process.

H. Unless otherwise specified in this Agreement, prior written notice of termination shall be delivered by certified mail, return receipt requested, and shall be effective upon receipt of such notice, as evidenced by the return receipt.

I. Termination under this Section shall be in addition to and not in limitation of any other remedy at law or in equity.

15. Surrender of Premises: At the end of the term of this Agreement or any extension or hold-over thereof or other termination of this Agreement, the District shall peaceably deliver up to the City possession of the Premises. The Premises will be surrendered "as is" with no warranties regarding the condition of the Premises or the Improvements.

16. Subcontracting and Assignment: The District shall not sublicense the Premises nor subcontract or assign this Agreement or any interest therein, to any person, without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

17. Non-Discrimination: The City and the District shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age or the presence of any sensory, mental or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits associated with this Agreement. The City and the District shall comply fully with all applicable federal, State and local laws, executive orders, and regulations which prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 of the Revised Code of Washington, Titles VI and VII of the Civil Rights Act of 1964, and Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC).

18. **Disputes:** The parties agree to endeavor to make reasonable accommodations with regard to the Premises and to work together cooperatively to resolve problems that may arise from time to time. In the event of a dispute regarding this Agreement, the parties agree to follow the procedures in this Section prior to filing or initiating a lawsuit. The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the City's Superintendent of Parks and Recreation and the District's Executive Director. If those officials are unable to resolve the dispute within a period of fifteen (15) calendar days after the matter has been formally referred to them for resolution (or within 48 hours, if the matter is one that will immediately affect water taxi service), they shall meet during the immediately succeeding seven (7) calendar days (or 1 calendar day, if the matter is one that will immediately affect water taxi service) to select a mediator to assist in the resolution of such dispute. The District and the City agree to participate in mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally between the parties.

19. **Agents, Successors and Assigns:** All of the agreements, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, agents and assigns of the City and the District.

20. **Notices:** Subject to Section 14(H) (Early Termination) of this Agreement, required notices, except legal notices, shall be given in writing to the following respective addresses, effective as of the post-mark time and date, or to such other place as may hereafter be designated by either party in writing:

If to the CITY, to:

Seattle Parks and Recreation
c/o Superintendent
100 Dexter Avenue North
Seattle, Washington 98109-5199

If to the DISTRICT, to:

King County Department of Transportation
Marine Division
201 South Jackson Street, KSC-TR-0816
Seattle, Washington 98104-3856

21. **Compliance with all Laws and Regulations:** The District's use of the Premises shall be contingent upon it obtaining all certificates, permits, zoning and other approvals which may be required by any federal, State or local authority. The District shall use the Premises, as authorized herein, in compliance with all applicable laws and regulations, now in effect or which may become effective hereafter by any federal, State or local authority.

22. **No Presumption Against Drafter:** The City and the District understand, agree and acknowledge that this Agreement has been freely negotiated by both parties and that in the event of any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

23. **Captions:** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of the Agreement.

24. **Venue and Choice of Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any legal action brought under the terms of this Agreement shall be in the county in which the Premises are located.

25. **Authority to Contract:** Each party represents and warrants to the other that: it has full right, power and authority to execute this Agreement and has the power to grant all rights hereunder, its execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, agreement or other agreement binding on said party, and the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary personnel or corporate officers and do not violate any provisions of law or the party's certificate of incorporation or bylaws or any other arrangement, provision of law or court order or decree.

26. **Appendices:** The following exhibits are attached hereto and incorporated herein by reference:

- A. Site Plan
- B. Description of Improvements and Dock Plan


27. **Entire Agreement - Amendments:** This Agreement and any and all exhibits attached hereto constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

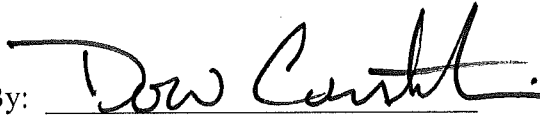
28. **Severability:** The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or void and such other provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the City and the District have executed this Agreement on the dates specified below.

CITY OF SEATTLE, WASHINGTON:

KING COUNTY FERRY DISTRICT

By: 
Name: TIMOTHY A. GALLAGHER
Title: SUPERINTENDENT

By: 
Name: Dow Constantine
Title: Chair of the Ferry District

Date: 11/3/09

Date: 11-2-09

APPROVED AS TO FORM ONLY:

By: 
Rod Kaseguma

Date: 11/12/09

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Timothy A. Gallagher is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the SUPERINTENDENT to be the free and voluntary act of such entity for the use and purposes mentioned in this instrument.

Date: 11/3/09



Josette Valentino
NOTARY PUBLIC
JOSETTE VALENTINO
(printed name)
in and for the State of Washington
residing at
. My appointment expires 10/04/11

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Dow Constantine is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Chair to be the free and voluntary act of such entity for the use and purposes mentioned in this instrument.

Date: 11-2-09

Anne Noris
NOTARY PUBLIC
Anne Noris
(printed name)
in and for the State of Washington
residing at
. My appointment expires 11-20-10

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks and Recreation	Paula Hoff/ 615-0368	Jennifer Devore/ 615-1328

Legislation Title: AN ORDINANCE relating to the use of premises under the jurisdiction of the Department of Parks and Recreation; authorizing the Superintendent of Seattle Parks and Recreation to enter into an agreement with King County for construction of a floating dock and use of a portion of real property at Seacrest Park for operation of the Elliott Bay Water Taxi.

Summary of the Legislation:

This legislation authorizes the Superintendent of Parks and Recreation to enter into a Construction and License Agreement between the City and the King County Ferry District (County) for construction of and use of a new dock at Seacrest Park. In lieu of a use permit fee, the County will construct a new dock to replace the existing floating dock that has reached the end of its useful life. Upon completion the new dock will be the property of the City. The County will share use of the new dock with the public. The City will be responsible for all reasonable costs associated with the routine maintenance and repair of the dock and the County will be responsible for repairing or correcting any design or construction defects in the improvements and for repair of any damage caused by its operation of the water taxi. We are anticipating about \$7,500 annually for increased maintenance for addition of a year-round floating dock. This includes increased litter pick-up from higher use and increased maintenance from having the dock in the water during the winter months.

Background:

The Elliott Bay Water Taxi has been operating from the dock at Seacrest Park for 12 years. In March 2009, the Board of Park Commissioners recommended, and the Superintendent concurred, to allow year-round operation of the taxi, operating from Seacrest dock, on a temporary basis starting in 2010. The County's goal is to have a permanent new site within five years. The new floating dock will enable year-round operation while at the same time providing a replacement facility that will enhance recreational use of Seacrest Park. The new dock will include a wider, longer gangway improving access, particularly for people with disabilities, and new concrete floats providing greater stability. A change in orientation of the new dock moves the water taxi further from the scuba dive area, improving access for kayakers and other small boats, and reduces shadowing of the near-shore area. When completed, the new dock will be owned by the City.

X This legislation has financial implications.

We are anticipating about \$7,500 annually for increased maintenance with the addition of a year-round floating dock. This includes increased litter pick-up from higher use and increased maintenance from having the dock in the water during the winter months.



What is the financial cost of not implementing this legislation? N/A

- Does this legislation affect any departments besides the originating department? Over time there may need to be some signage/parking improvements in and around the site by Seattle Department of Transportation..
- What are the possible alternatives to the legislation that could achieve the same or similar objectives? N/A
- Is the legislation subject to public hearing requirements? No, although a public meeting was held to discuss the proposal on January 15, 2009. In addition, the Board of Park Commissioners held a public hearing on March 12, 2009, and then recommended that the Superintendent move forward with year-round service of the Elliott Bay Water Taxi.
- Other Issues (including long-term implications of the legislation): N/A





City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

September 29, 2009

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that authorizes the Superintendent of Parks and Recreation to enter into an agreement with the King County Ferry District (County) for the use and redevelopment of the dock at Seacrest Park. The County will construct a new dock to replace the existing one that has reached the end of its useful life.

The Elliott Bay Water Taxi has been operating from the dock at Seacrest Park for 12 years. The new floating dock, which the County proposes to construct, will enable year-round taxi operation and improve recreational access to Puget Sound. The new dock will have a wider, longer gangway improving access, particularly for people with disabilities, and new concrete floats providing greater stability. The orientation of the new dock moves the water taxi further from the area that is used to train and certify local scuba divers, improving access for kayakers and other small boats and increasing the amount of natural light to the fish habitat in the near-shore area. When completed, the new dock will be owned by the City.

Passage of this Bill further supports the use of public transportation by providing a better facility for the operation of the Elliott Bay Water Taxi. Thank you for your consideration of this legislation. Should you have questions, please contact Paula Hoff, Strategic Advisor at Seattle Parks and Recreation, at 615-0368.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", written over a horizontal line.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.



DOCK CONSTRUCTION AND LICENSE AGREEMENT

THIS AGREEMENT is made by and between **The City of Seattle**, a first class city of the State of Washington, hereinafter called "the City," and **King County Ferry District**, a municipal corporation organized under the authority of RCW 36.54.110 hereinafter called "the District."

AGREEMENT

In consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. **Premises:** Upon the following terms and conditions, the City agrees to permit the District, in particular the Marine Division of King County, and their officers, officials, employees, agents, consultants and contractors, to use the Premises, located in King County, Washington, and comprising, as of the Commencement Date of this Agreement, a floating dock at Seacrest marina and upland areas as depicted generally on the site plan attached as **Appendix A** and incorporated herein. The Premises are located on a portion of the real property commonly known as Seacrest Park, 1660 Harbor Avenue Southwest in Seattle, Washington, and having the following legal description:

SEATTLE TIDE LANDS EXT #1 TOGETHER WITH BLOCKS 448A & 449 & 449A SD ADD & VACATED STREET ADJOINING – TOGETHER WITH LOTS 1 & 2 & NORTHWESTERLY 37 FEET OF LOT 3 BLOCK 445 & LOTS 1 & 2 & NORTHWESTERLY 37 FT OF BLOCK 445A SD ADDITION TOGETHER WITH POR GL 1 ADJ LOTS 3 & 4 BLK 449A ON E & LYING WITHIN WATER WAY IF ANY.

2. **Term:** This Agreement's term shall be five (5) years, commencing on _____, 2009 ("Commencement Date") and ending on _____, 2014, unless terminated sooner as provided herein. The District has the right to extend this Agreement on the same terms and conditions (except that there shall be no additional extension options) for up to five (5) additional one-year periods, upon written notice to the City at least ninety (90) calendar days prior to expiration of the initial Agreement term or an extended Agreement term.

3. **Consideration:**

In lieu of payment of a fee for the use of the Premises, the District shall contract for the construction of the improvements described in Section 7 below and Appendix B hereto (the "Improvements").



4. **Use of Premises:** The District shall use the Premises solely for the docking, and the loading and unloading of passengers to and from a passenger-only water taxi operated by the District or its contractor, and purposes incidental thereto. The District will notify and reach agreement with the City on the size of the watercraft that will be used at the Premises when such information becomes available to the District. Except as provided below, the District shall have shared use of the Premises with the public; provided that no other uses shall unreasonably interfere with the District's permitted use of the Premises. The District shall have exclusive use of the dock space along the "T" section at the southerly end of the dock (as depicted on the Appendices hereto) used to moor the water taxi vessel during the water taxi's hours of operation. The District shall provide appropriate signage to demarcate this section of the dock. The District shall possess all rights necessary for its passengers to access and use the dock, including the rights of ingress and egress and the nonexclusive right to use Seacrest Park in common with the public.

5. **Utilities:** The City shall maintain, at its sole expense, all utilities presently serving the Premises. Any additional utility services necessary for water taxi operations shall be the District's sole responsibility.

6. **Signs and Markings:** In addition to the demarcation signage described in Section 4 above, the District may install, at its own expense, its usual and customary signs identifying the Premises as a facility used by the District for its service, including, but not limited to sailing schedule, warning signs, and directional and circulation signs, and markings. All signs and markings shall be approved by the City prior to posting and removed by the District upon termination of this Agreement.

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A. The District will cause the Improvements to be installed at its sole expense and in accordance with good engineering practices, all applicable laws and rules and the terms of this Agreement and in accordance with plans and specifications approved by the City. The City shall not unreasonably withhold approval of such Improvements. The Improvements shall be the property of the City upon the District's acceptance of the Improvements and shall remain on the Premises at the expiration or termination of this Agreement.

B. Any future improvements that the District wishes to make shall be done at the District's expense and according to plans approved by the City. The District shall provide the City reasonable opportunity and time to fully review, comment on, and request reasonable modifications to all such plans. The City shall not unreasonably withhold approval of such improvements.



C. The District shall be responsible for repairing or correcting any design or construction defects in the Improvements that are discovered within two years from the completion of construction of the Improvements (the "Warranty Period"). After the Warranty Period, if circumstances arise that would permit a claim against any person or entity involved in the design or construction of the Improvements, then the District agrees to assign such claim to the City and to fully cooperate with the City in the investigation and City's prosecution of the claim.

8. **Maintenance and Repairs:** Unless otherwise agreed to in writing by the City and the District, the City shall be responsible for all costs associated with the maintenance and repair of the Premises and Improvements, other than maintenance and repair of signs and markings installed by the District. The District shall be responsible for and shall repair any damage, except ordinary wear and tear, to the "T" section at the southerly end of the dock (as depicted on **Appendix B** hereto) caused by its operation of the water taxi service. The City shall maintain the Premises and the Improvements to the same standards as other similar park facilities and in a condition that allows for the District's exercise of its rights under this Agreement. The District shall notify the City if it becomes aware of any condition of the Premises or Improvements requiring repair. The District's obligations relating only to repairing or correcting any design or construction defects in the Improvements that are discovered during the Warranty Period shall survive the expiration or termination of this Agreement.

The City will provide the District with two (2) weeks' advance notice of routine maintenance and routine repairs and the schedule for such maintenance and coordinate such work with the District to minimize the potential impacts the work will have on operations of the water taxi and on water taxi customers. Emergency repairs will not require advance notification to the District. Subject to the foregoing, repair work shall begin without delay and continue without interruption until completed. If damage is extensive, the time allowed for repair will be agreed upon by the parties. If a party believes that the other party is not performing any necessary and required maintenance and repairs, then, after having given notice to the other party and a reasonable amount of time to address the damage or condition of the Premises, in addition to other remedies provided herein, the party may invoke the dispute resolution procedures described in Section 18.

9. **Annual Inspection:** Annually throughout the Term, on a date agreed upon by the parties, the City and the District shall jointly inspect the Premises.

10. **Liens:** The District shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by the District.

11. **Hazardous Substances:**

A. The City and the District covenant that during the Agreement term, they or their agents, contractors or other licensees shall not handle, use, store, generate or dispose



of any hazardous substances regulated under any State or federal law or regulation at or upon the Premises, except for such hazardous substances reasonably necessary for the operation, maintenance and authorized uses of the Premises, in which event, each party shall handle, use, store, generate or dispose of such hazardous substances in compliance with all applicable laws, ordinances, rules and regulations.

12. Mutual Indemnification and Hold Harmless: Each party shall protect, defend, indemnify and save harmless the other party, its officers, officials, employees and agents while acting within the scope of their employment as such, from any and all suits, costs, claims, actions, losses, penalties, judgments and/or awards of damages, of whatsoever kind arising out of, in connection with or incident to the rights and obligations associated with this Agreement caused by or resulting from such party's own negligent, reckless or willful acts or omissions, including the violation of any environmental law. Each party agrees that it is fully responsible for the acts and omissions of its own subcontractors, their employees and agents, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents; provided that neither party is responsible for the acts and omissions of water taxi passengers or the general public. Each party agrees that its obligations under this provision extend to any claim, demand and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them. This indemnity and hold harmless provision shall survive the expiration of this Agreement and apply to the maximum extent permitted by law including, if applicable, as defined by RCW 4.24.115, now enacted or as hereinafter amended.

13. Insurance: The City acknowledges, agrees and understands that as of the date of this Agreement, the District has obtained insurance coverage through the Washington Governmental Entity Pool as authorized by Ferry District Resolution No. 2008-7.1 and, as of the date of this agreement, maintains marine liability insurance as described in Ferry District Resolution No. 2008-10.1. The District agrees to maintain throughout the term of this Agreement, at its sole expense, the same or substantially similar types of insurance coverages as are in effect as of the date of this Agreement, with at least the same minimum limits of liability. The District agrees to provide the City with at least thirty (30) days' prior written notice of any change in the District's insurance program and will provide the City with such proof of insurance as the City may request from time to time.

The District acknowledges, agrees and understands that the City is self-insured for all of its liability exposures. The City agrees, at its own expense, to maintain through its self-insurance program coverage for its liability exposures for the duration of this Agreement. The City agrees to provide the District with at least thirty (30) days' prior



written notice of any change in the City's self-insured status and will provide the District with the letter of self-insurance as adequate proof of insurance, upon the District's request.

14. Suspension or Termination: This Section is in addition to any other provision of this Agreement authorizing or otherwise relating to its early termination.

A. If there is any condition that would cause the Premises or the Improvements to be unusable for the purposes of this Agreement if not repaired and the repairs exceed the City's available resources therefor, the parties shall commence the dispute resolution process described in Paragraph 18 within 72 hours of the City's determination in order to resolve any outstanding issues.

B. This Agreement is contingent upon the District obtaining all necessary governmental approvals, certificates, permits or licenses which are required by law and/or the District may deem necessary. In the event that any of the District's applications for said approvals, certificates, permits or licenses should be rejected or any approval, certificate, permit or license issued to the District is canceled or otherwise withdrawn or terminated by a governmental authority so that the District will be unable to use the Premises for its intended purpose, the District shall have the right to terminate this Agreement, upon thirty (30) calendar days' prior written notice to the City.

C. In the event that the Premises or the District's facilities or any portion thereof are condemned or substantially damaged or destroyed so as to hinder effective use of any portion of the Premises or any of the District's facilities for passenger-only water taxi purposes, the District may elect to terminate this Agreement, upon thirty (30) calendar days' written notice to the City.

D. The District may terminate this Agreement for its convenience at any time by providing sixty (60) calendar days' advance written notice to the City.

E. The District may terminate this Agreement if the City breaches or fails to perform or observe any of the terms and/or conditions of this Agreement, and fails to cure such breach or default within thirty (30) calendar days after written notice from the District or such longer period, up to sixty (60) calendar days, as may be reasonably required to diligently complete a cure commenced within that thirty (30) calendar day period and being diligently and continuously pursued by the City.

F. The City may terminate this Agreement if the District breaches or fails to perform or observe any of the terms and/or conditions of this Agreement, and fails to cure such breach or default within thirty (30) calendar days after written notice from the City or such longer period, up to sixty (60) calendar days, as may be reasonably required to diligently complete a cure commenced within that thirty (30) calendar day period and being

diligently and continuously pursued by the District. Prior to the City's termination, both parties shall undertake the dispute resolution process described in Paragraph 18.

G. The City shall notify the District should the State of Washington adopt any law or regulation or take any other action that affects the City's or the District's right to use and occupy all or any portion of the Premises, or imposes any fee for such use and occupation or for operation of the water taxi that exceeds the fee the City is paying the State as of the Commencement Date. If the City and the District are both willing to comply with such laws, regulations or other actions, and the District is willing to pay all or such portion of the fee increase that is related to the District's use and occupation of the Premises or the District's operation of the water taxi, then the parties shall document such agreement in a written amendment to this Agreement. If the parties are unable to reach an agreement, they shall promptly undertake the dispute resolution process described in Paragraph 18. If the parties are unable to reach agreement through the dispute resolution process, the City may terminate this Agreement thirty (30) days after completion of the dispute resolution process.

H. Unless otherwise specified in this Agreement, prior written notice of termination shall be delivered by certified mail, return receipt requested, and shall be effective upon receipt of such notice, as evidenced by the return receipt.

I. Termination under this Section shall be in addition to and not in limitation of any other remedy at law or in equity.

15. Surrender of Premises: At the end of the term of this Agreement or any extension or hold-over thereof or other termination of this Agreement, the District shall peaceably deliver up to the City possession of the Premises. The Premises will be surrendered "as is" with no warranties regarding the condition of the Premises or the Improvements.

16. Subcontracting and Assignment: The District shall not sublicense the Premises nor subcontract or assign this Agreement or any interest therein, to any person, without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

17. Non-Discrimination: The City and the District shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age or the presence of any sensory, mental or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits associated with this Agreement. The City and the District shall comply fully with all applicable federal, State and local laws, executive orders, and regulations which prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 of the Revised Code of Washington, Titles VI and VII of the Civil Rights Act of 1964, and Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC).



18. **Disputes:** The parties agree to endeavor to make reasonable accommodations with regard to the Premises and to work together cooperatively to resolve problems that may arise from time to time. In the event of a dispute regarding this Agreement, the parties agree to follow the procedures in this Section prior to filing or initiating a lawsuit. The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the City's Superintendent of Parks and Recreation and the District's Executive Director. If those officials are unable to resolve the dispute within a period of fifteen (15) calendar days after the matter has been formally referred to them for resolution (or within 48 hours, if the matter is one that will immediately affect water taxi service), they shall meet during the immediately succeeding seven (7) calendar days (or 1 calendar day, if the matter is one that will immediately affect water taxi service) to select a mediator to assist in the resolution of such dispute. The District and the City agree to participate in mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally between the parties.

19. **Agents, Successors and Assigns:** All of the agreements, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, agents and assigns of the City and the District.

20. **Notices:** Subject to Section 14(H) (Early Termination) of this Agreement, required notices, except legal notices, shall be given in writing to the following respective addresses, effective as of the post-mark time and date, or to such other place as may hereafter be designated by either party in writing:

If to the CITY, to:

Seattle Parks and Recreation
c/o Superintendent
100 Dexter Avenue North
Seattle, Washington 98109-5199

If to the DISTRICT, to:

King County Department of Transportation
Marine Division
201 South Jackson Street, KSC-TR-0816
Seattle, Washington 98104-3856

21. **Compliance with all Laws and Regulations:** The District's use of the Premises shall be contingent upon it obtaining all certificates, permits, zoning and other approvals which may be required by any federal, State or local authority. The District shall use the Premises, as authorized herein, in compliance with all applicable laws and regulations, now in effect or which may become effective hereafter by any federal, State or local authority.



22. **No Presumption Against Drafter:** The City and the District understand, agree and acknowledge that this Agreement has been freely negotiated by both parties and that in the event of any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

23. **Captions:** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of the Agreement.

24. **Venue and Choice of Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any legal action brought under the terms of this Agreement shall be in the county in which the Premises are located.

25. **Authority to Contract:** Each party represents and warrants to the other that: it has full right, power and authority to execute this Agreement and has the power to grant all rights hereunder, its execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, agreement or other agreement binding on said party, and the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary personnel or corporate officers and do not violate any provisions of law or the party's certificate of incorporation or bylaws or any other arrangement, provision of law or court order or decree.

26. **Appendices:** The following exhibits are attached hereto and incorporated herein by reference:

- A. Site Plan
- B. Description of Improvements and Dock Plan

27. **Entire Agreement - Amendments:** This Agreement and any and all exhibits attached hereto constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.



28. **Severability:** The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or void and such other provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the City and the District have executed this Agreement on the dates specified below.

CITY OF SEATTLE, WASHINGTON:

KING COUNTY FERRY DISTRICT

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM ONLY:

By: _____

Rod Kaseguma

Date: _____



STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that _____ signed this instrument, on oath stated that he was authorized by _____ to execute the instrument and acknowledged it as the _____ to be the free and voluntary act of said _____ for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC

(printed name)
in and for the State of Washington
residing at _____
My appointment expires _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that _____ signed this instrument, on oath stated that he was authorized by the King County Executive to execute the instrument and acknowledged it as the Director of the Marine Division of the Department of Transportation of King County, Washington, to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC

(printed name)
in and for the State of Washington
residing at _____
My appointment expires _____



STATE OF WASHINGTON – KING COUNTY

--SS.

246496
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

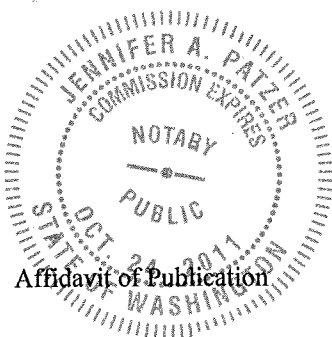
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123132-133,135&138

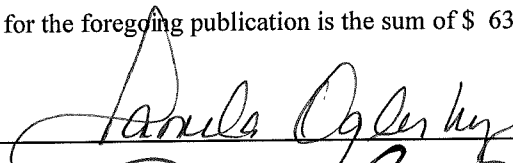
was published on

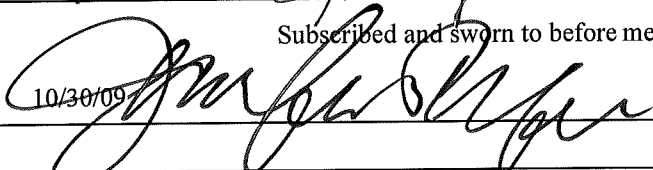
10/30/09

The amount of the fee charged for the foregoing publication is the sum of \$ 63.68, which amount has been paid in full.



Affidavit of Publication



Subscribed and sworn to before me on
10/30/09 

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on October 19, 2009, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 123138

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 123135

AN ORDINANCE relating to the use of premises under the jurisdiction of the Department of Parks and Recreation; authorizing the Superintendent of Seattle Parks and Recreation to enter into an agreement with the King County Ferry District for construction of a floating dock and use of a portion of real property at Seacrest Park for operation of the Elliott Bay Water Taxi.

ORDINANCE NO. 123133

AN ORDINANCE relating to the SR 99 Alaskan Way Viaduct and Seawall Replacement Program; stating the City's policy with respect to an alternative for replacing the present Viaduct and Seawall, and related work; and authorizing execution of a Memorandum of Agreement between the State of Washington and the City of Seattle.

ORDINANCE NO. 123132

AN ORDINANCE relating to the Lake Union Park Armory; authorizing the Superintendent of Parks and Recreation to enter into a development agreement and lease to allow the Museum of History and Industry to redevelop and use the Lake Union Armory Building for a new regional history museum.

Publication ordered by the City Clerk

Date of publication in the Seattle Daily Journal of Commerce, October 30, 2009.

10/30(246496)