

AGENDA

Bainbridge Island Metropolitan Park & Recreation District Regular Board Meeting 6:00 pm Thursday – October 5, 2023

Bainbridge Island Recreation Center
11700 Meadowmeer Circle NE
Bainbridge Is, WA 98110
206-842-5661

Remote access options for board meetings available at www.biparks.org.

6:30 pm: Executive Session

10. CALL TO ORDER

- 10.1** Roll Call
- 10.2** Adjustments to the Agenda
- 10.3** Conflict of Interest Disclosure
- 10.4** Mission Statement: The mission of the Bainbridge Island Metropolitan Park & Recreation District is to build a healthy community through effective, sustainable stewardship of the District's parks and open space, and through the development and delivery of innovative cultural and recreation opportunities.

20. PUBLIC COMMENTS

30. BOARD CONSENT

- 30.1** Minutes: Regular Board Meeting of September 21, 2023
- 30.2** Financial: Approval of vouchers and payroll.

40. GENERAL BUSINESS

- 40.1** New Staff Introductions Lande (10 min)
Action: Information only.

- 40.2** Dock Extension Interlocal Agreement and Sublease with City of Bainbridge Island Keough (20 min)
Action: Motion to approve and authorize executive director to sign.

50. STAFF REPORT

60. UPCOMING MEETINGS

10/19/23	Regular Board Meeting	6 pm	Bainbridge Island Recreation Center
10/19/23	Work Session	7 pm	Bainbridge Island Recreation Center
11/02/23	Regular Board Meeting	6 pm	Bainbridge Island Recreation Center
11/16/23	Regular Board Meeting	6 pm	Bainbridge Island Recreation Center
12/07/23	Regular Board Meeting	6 pm	Bainbridge Island Recreation Center

70. BOARD MEMBER REMARKS

80. ADJOURNMENT

90. ADJOURN TO EXECUTIVE SESSION IF NEEDED

- 100. **EXECUTIVE SESSION** — real estate, per RCW 42.30.110(1)(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price.
- 110. **RECONVENE TO REGULAR SESSION**
- 120. **ADJOURNMENT**

Board Committees

Governance
 Capital Facilities
 Program
 Budget & Finance
 Personnel
 Ad Hoc Committee: Forest Management
 Ad Hoc Committee: Sakai Site Planning

2023 Board Representatives

Kinney/Swolgaard
 Kinney/Janow
 Janow/DeWitt
 Goodlin/Janow
 DeWitt/Kinney
 Swolgaard/DeWitt
 Goodlin/Swolgaard

Board Liaisons

Park District Committees:
 Trails Advisory Committee
 Dog Advisory Committee

Goodlin/DeWitt
 Kinney/Janow

Community/Public Agencies:
 Bainbridge Island Parks & Trails Foundation
 Intergovernmental Work Group (IGWG)
 Bainbridge Island School District
 City of Bainbridge Island

Goodlin/Janow
 Kinney/Swolgaard
 Goodlin/Kinney
 DeWitt/Janow

**BAINBRIDGE ISLAND METROPOLITAN PARK & RECREATION DISTRICT
 REGULAR BOARD MEETING September 21, 2023
 BAINBRIDGE ISLAND RECREATION CENTER**

CALL TO ORDER: A quorum being present, the meeting was called to order at 6:00 pm by Chair Kinney.

BOARD MEMBERS PRESENT: Ken DeWitt, Tom Goodlin, Dawn Janow, Jay Kinney, Tom Swolgaard.

ADJUSTMENTS TO AGENDA: Add an executive session for real estate and litigation for twenty minutes.

MISSION STATEMENT: Chair Kinney read the Park District’s mission statement: The mission of the Bainbridge Island Metropolitan Park & Recreation District is to build a healthy community through effective, sustainable stewardship of the District’s parks and open space, and through the development and delivery of innovative cultural and recreation opportunities.

BOARD CONSENT

APPROVAL OF MINUTES:

Upon hearing there were no corrections to the minutes of the September 7, 2023 regular board meeting, Chair Kinney stated the minutes stand approved as submitted.

APPROVAL OF PAYMENTS: MSC: Janow/Swolgaard: I have reviewed the following vouchers, warrants and electronic payments and move that they be approved for payment.

Batch Date	Fund Number & Name	Warrant Numbers	Total Batch Amt	Pre-Approved
08/04/23	001 General Fund 300 Capital Improvement Fund	26205-26241	106,451.77	08/04/23
08/10/23	001 General Fund 300 Capital Improvement Fund	26242-26297	45,841.43	08/10/23
08/17/23	001 General Fund 300 Capital Improvement Fund	26298-26367	181,536.16	08/17/23
08/24/23	001 General Fund 300 Capital Improvement Fund	26368-26447	98,508.96	08/24/23
08/31/23	001 General Fund 300 Capital Improvement Fund	26448-26496	124,584.91	08/31/23
09/21/23	001 General Fund	Pre-approval	77,778.34	

GENERAL BUSINESS

2023 STUDENT CONSERVATION CORPS RECAP: Volunteer Program Manager Morgan Houk said 2023 was the 13th season of hosting Student Conservation Corps and the largest SCoCo crew the Park District has ever had. Over three sessions 40 teens were hired and three leadership staff. Each session consisted of 18 teens with ten or more teens on the waitlist for each session. SCoCo spent 3,200 hours working in ten parks over nine weeks. More than 175 yards of invasive species were removed, and more than 35 yards of mulch were spread. Two new boot brush stations, which allow park users to remove dirt and invasive weed seeds from their shoes, were installed thanks to a grant from Bainbridge Island Parks & Trails Foundation. Boot brush stations prevent the spread of invasive species, which is the most cost-effective way to manage them. There were 21 educational speakers throughout the season which exposed students to various career paths. SCoCo 2024 is going to look a lot like this year with three sessions. Staff recently got word that the Park District received a grant from the Recreation and Conservation Office outdoor learning grant program to fund neurodiverse SCoCo in 2024. The grant includes funds for tools, a tool trailer, and compensation for eight neurodiverse participants and eight peer mentors.

Morgan Houk thanked the two SCoCo financial supporters: BIPTF and the Bainbridge Island Land Trust. Commissioner Swolgaard asked about the waiting list and how it can be resolved for next year. Morgan Houk said the sessions are currently maxed out with how many people can be in a park at a time, but she is brainstorming ideas for additional opportunities, such as the peer mentorship opportunity in connection with the neurodiverse program.

UPDATE ON FOREST MANAGEMENT PLAN: Natural Resources Manager Lydia Roush said she has been focusing on getting thinning operations going, working on hazard tree assessments and mitigation, and education. For almost two years staff have been pushing material out to the public about why the Park District is going to be thinning trees and why it is healthy. Timber cruises have been completed at Strawberry Hill Park and Moritani Preserve by Silva Solutions. A logging bid has been prepared with the goal of having one logger for both the Strawberry Hill Park and the Moritani Preserve projects to create a volume that logging companies will be interested in. The plan is to have the logging complete in 2023. The Tolo parcel just across from Grand Forest East has several pockets of laminated root rot; staff has plans to thin that parcel and bring down hazard trees. At Blakely Harbor Park there are trees of concern that staff would like to remove that will require shoreline permits. Hazard tree removals have been completed at Hidden Cove Park and Grand Forest East. Trees have been snagged at Aaron Tot Lot and Pritchard Park. Plans are currently being determined for Madison Tot Lot and the Tolo parcel. The need for hazard tree removal comes with having trees. Snagging trees by cutting them to 20-50 feet and allowing them to rot naturally, is a great option for dead trees to fulfill an ecological purpose. Some of the issues seen in hazard trees in parks include fungus, cankers, and bacterial infections. Laminated root rot is a natural fungus that belongs in Washington State, and it helps to cull over dense forests. Part of the way to alleviate and reduce laminated root rot is by thinning forests to create healthier trees. It is not ideal to have to take down hazardous trees like the ones at Hidden Cove Park, however the trees were milled locally and will be used to build boardwalks. The Suquamish Tribe also got several logs to use for cultural activities. Education has consisted of social media campaigns, posting information on the website, educational talks, banners in parks, and a forestry education breakout session at the Bainbridge Island Environmental Conference. All these opportunities have allowed the Park District to connect with the public and continue to tell the story of what staff are doing, what the goals are, and that the Park District is acting for the ecological health and wellness of parks. Commissioner Goodlin said tagging the trees in advance allows people to recognize something is happening and gives them warning. Lydia Roush said that when staff are working on tree issues, they try to put informational signage in the park and post it on social media.

INTEGRATED PEST MANAGEMENT REVIEW: Natural Resources Manager Lydia Roush said staff were able to maintain weeds in 21 parks in 2023. The four types of controls for invasive species management are cultural, mechanical/physical, biological, and chemical. The newly installed boot brush stations are an example of a cultural control to reduce the spread of seeds. Other cultural controls used by staff include planting native plants so invasive species cannot take hold and mulching to smother weeds and build up the soil. This year manual removal of invasive species was done by staff, Student Conservation Corps, Earth Corps, and volunteers. Mechanical removal was accomplished by mowing. Biological control was done utilizing goats at Blakely Harbor Park. Chemical applications occurred in ten parks in 2023. Staff tried to bring in more organic products this year with mixed success. Integrated pest management was performed in 21 parks and 16.15 gallons of herbicide and 251 imazapyr shells were used on 3.4 acres of parkland in ten parks. That is less than .01% of parkland that was treated with herbicide in 2023. The imazapyr shells are contained and shot directly into the plant leaving no way for it to come into contact with park users or translocate. To date in 2023, volunteers have donated over 2,000 hours of time to remove invasive species in parks and there are 31 projects left until the end of the year. Having volunteers, contractors, SCoCo, and Earth Corps expands the scope of what staff can do to accomplish goals. There were 18 invasive species targeted this year and there is still an upcoming fall application. Compared to 2022, in 2023 10 additional parks were worked in and three additional invasive species were controlled. Additional cultural, biological, manual, and organic/contained

chemical controls were used and follow up treatments were done which helped significantly. Commissioner Swolgaard said he had a constituent talk to him about how important dandelions are to bees in the spring and that they need to be left alone. Lydia Roush said dandelions are very important to bees in the spring and the Park District does not spray them.

INTEGRATED PEST MANAGEMENT APPLICATION PROPOSAL: Natural Resources Manager Lydia Roush said the 2024 integrated pest management proposal is to continue to expand the program to additional parks, to leverage staff, volunteer, and contractor resources, and to monitor for new populations and species. The staff is also focusing on weeds of concern, which are plants that act like invasive species but are technically not listed as such, an example is rocky mountain maples. **MSC: DeWitt/Janow: Move to approve the staff request to apply herbicide treatments for noxious weeds, broadleaf weeds, and species of concern on District properties at 1) known locations, 2) newly discovered locations, 3) sports fields and 4) follow up treatments as necessary through the spring and fall application seasons.** Commissioner DeWitt said he thinks it is great and as a reminder the Park District was the very first agency in Kitsap County to adopt an integrated pest management plan back in 1986.

FUELS REDUCTION GRANT PARTNERSHIP WITH BAINBRIDGE ISLAND FIRE DEPARTMENT: Natural Resources Manager Lydia Roush said Bainbridge Island Fire Department approached her to ask if the Park District would co-submit the Ready, Set, Go! Wildfire Grant with them. There is a \$20,000 maximum award and the grant as written is asking for \$18,600 to have Washington Conservation Corps spend three weeks doing fire mitigation projects in parks. There is a 25% match required which BIFD said they would split with the Park District. The plan is for fuel reduction at high use parking areas such as Grand Forest, Gazzam Lake Nature Preserve, Fort Ward Park, and Ted Olson Nature Preserve. The goal is not to clear out all the vegetative material but rather to mitigate the areas where there is the most contact with the public and especially where the public is stationary. Staff are already working to create buffers around every park by thinning things out to create some discontinuity between fuel materials. Commissioner Goodlin asked if chainsaw work is limited or prohibited during the burn ban season in the summer. Lydia Roush said no, but staff try not to do tree work during that season due to the temperature and because of bees. **MSC: DeWitt/Swolgaard: Move to approve the fuels reduction grant partnership with Bainbridge Island Fire Department.** Commissioner DeWitt said it is wonderful that the Park District is getting going with this and asked if the City of Bainbridge Island is going to be involved at all. Lydia Roush said she is not sure what COBI is doing for parkland or open areas on this issue. Commissioner DeWitt said it needs to be an effort of all three agencies working together. Commissioner Goodlin said he thinks it is great, but he worries most about fireworks. Lydia Roush said that staff always try to have all the meadows mowed by the 4th of July for that reason.

STAFF REPORT

Recreation Division: Recreation Superintendent Bryan Garoutte said the Bainbridge Island Recreation Center's 2nd birthday bash went well. Fall soccer at Battle Point Park starts this Saturday. Glass fusing classes have been very popular.

Executive Director Terry Lande said a new head coach with 37 years of experience has been hired for Bainbridge Island Swim Club. The pool liner mediation came to a settlement for \$300,000 after failure of the product and the application. Cody Ogren has been hired full time as an adaptive recreation coordinator.

BOARD MEMBER REMARKS:

- Commissioner Janow said that she noticed the Schel Chelb Park boardwalk has been completed.
- Commissioner Janow said fall recreation program registration went well and gave kudos to staff.
- Commissioner Janow said it would be fantastic for staff to give the presentations they gave tonight at the library for the community.
- Commissioner Goodlin said that he visited the Pritchard Park memorial bench.

- Commissioner Goodlin said he attended a work party at Strawberry Hill Park.
- Commissioner DeWitt asked about the status of the expansion of the parking lot for the Grand Forest West. Executive Director Terry Lande said permitting is underway.
- Commissioner Kinney said the Comcast Property appraisals were exchanged.

MEETING ADJOURNED to a five-minute recess at 7:23 pm with announced time to reconvene at 7:28 pm. **MEETING RECONVENED** at 7:28 pm.

MEETING ADJOURNED TO EXECUTIVE SESSION at 7:28 pm for discussion of real estate and litigation with announced time to reconvene at 7:48 pm.

MEETING RECONVENED at 7:48 pm and **ADJOURNED** at 7:48 pm.

Helen M. Stone
Terry M. Lande
BAINBRIDGE ISLAND METROPOLITAN
PARK & RECREATION DISTRICT

BY: _____
Jay C. Kinney

BY: _____
John Thomas Swolgaard

BY: _____
Dawn Janow

BY: _____
Kenneth R. DeWitt

ATTEST: _____
Tom Goodlin

Interlocal Agreement for Dock Extension

This **Interlocal Agreement for Dock Extension** (“Agreement”) is made and entered into by and between the City of Bainbridge Island (“City”), a Washington State municipal corporation, and Bainbridge Island Metropolitan Parks & Recreation District (“District”), a Washington State municipal corporation. This agreement is entered into pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW.

RECITALS

A. The District owns a sailing float (“Float”) that is currently anchored within the Aquatic Land Lease Area of WA Department of Natural Resources (DNR), which is leased to the City and complements the City’s adjacent public Waterfront Park. The District uses the Float to store and launch small sailboats for youth and adult sailing programs.

B. Considering the City’s interest in relocating the Float, as well as preferred options for the functions of the Float, the District commissioned a study of a Dock Extension. Based on the conclusions of the study, including cost estimates and permit guidance, the District is pursuing the Dock Extension. A conceptual drawing the Dock Extension is attached hereto as Exhibit A.

C. The City supports the Dock Extension and accordingly agreed to facilitate the project in “Interlocal Agreement for Relocation of the Sail Float,” formally executed on May 22, 2022 (“Existing ILA”). The purpose of the Existing ILA is to facilitate relocation and replacement of the Sail Float by way of the District’s construction, with the City’s assistance. Accordingly, the Existing ILA will terminate upon completion of the Dock Extension.

D. A sublease of the DNR Lease Area, from the City to the District, has been developed in consultation with DNR. It is required to be in place ahead of final permitting of the Dock Extension, which will be located within the DNR Lease Area.

E. Since execution of the Existing ILA, the District has been awarded funding from the Recreation and Conservation Office of Washington State (“RCO”) for this water-dependent, public recreation use. As a condition of the funding, RCO wants to ensure that upland access to the Dock Extension, which is located entirely on City property, will be assured for as long as the Dock Extension is located in its proposed location in the DNR Lease Area and open to the public.

AGREEMENT

The City and the District hereby agree as follows:

1. The Recitals are incorporated herein by reference.
2. No separate legal entity will be created in connection with this Agreement.
3. The City and the District are designated as co-administrators of this Agreement.
4. The purpose of this Agreement is to ensure that the District and the public will have access to the Dock Extension for as long as the Dock Extension is located in its proposed location in the DNR Lease Area and open

to the public. The access contemplated by this Agreement includes, without limitation, access by the District for use, maintenance and repair of the Dock Extension, and by the public for use and enjoyment of the Dock Extension for sailing related activities.

5. The City hereby agrees to allow access to the Dock Extension for the District and the public over and across upland City-owned property, including without limitation intertidal areas and Waterfront Park, for as long as the Dock Extension is located in its proposed location in the DNR Lease Area and open to the public. All access, by both the District and the public, shall be exercised in accordance with the reasonable rules and regulations established by the City with respect to the Dock Extension and the upland areas that allow for access to the Dock Extension. The access granted herein shall be, without limitation, for the reasons stated elsewhere in this Agreement, as well as for construction of the Dock Extension and related environmental mitigation requirements.
6. This Agreement shall become effective upon execution by the City and the District and continue in full force and effect for as long as the Dock Extension is located in its proposed location in the DNR Lease Area and open to the public. Additionally, the City and District commit to public access to the Dock Extension for a minimum of 25-years post implementation, regardless of lease terms. If the Dock Extension is relocated, or if it ceases to be open to the public, either the City or the District may terminate this Agreement upon 90 days' written notice to the other party.
7. The District will be solely responsible for all costs in connection with construction of the Dock Extension and will maintain a budget therefor in accordance with its standard accounting procedures.
8. Prior to construction of the Dock Extension, the District will provide the City with construction plans for review and approval, which shall not be unreasonably withheld. The City shall review the plans for consistency with the City's current use of the City's dock facilities and to ensure that no damage will occur to the City's dock facilities as the result of the construction. The District will also provide the City with copies of the completed bid package prior to issuance of the Information for Bids for City review and approval. The District will also provide the City with copies of the bids received and an opportunity to provide input on contractor selection. Final selection of a contractor shall be at the District's sole discretion.
9. During construction of the Dock Extension, the District will consult with the City before making any design changes that could have an impact on the City's use of the City's current dock facilities or that require any alteration of the City's current dock facilities. No alteration of the City's current dock facilities shall be made by the District without the City's express written approval.
10. The District shall be solely responsible for obtaining and complying with any necessary permits for the Dock Extension, including any permits required from the City, the Department of Natural Resources, and any other state or federal agency. Obtaining and complying with such permits shall be at the sole cost and expense of the District.
11. Upon execution of this Agreement, if they have not already done so, the City and the District will execute a sublease agreement under the DNR Lease that allows the Dock Extension in the DNR Lease Area for the duration of the DNR Lease. If in the future the DNR Lease is extended or renewed, in each such instance the City and District will extend or renew the sublease agreement to allow the Dock Extension to remain in the DNR Lease Area for the duration of the extended or renewed DNR Lease.
12. Unless stated otherwise herein, all notices shall be in writing and sent (via registered or certified mail, postage pre-paid) or hand-delivered to the parties at their addresses as follows:

To the City:

City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110
Attention: City Manager

To the District:

Bainbridge Island Metro Parks & Recreation District
11700 NE Meadowmeer Circle
Bainbridge Island, WA 98110
Attention: Executive Director

- 13. This Agreement shall be filed with the Kitsap County Auditor or, alternatively, listed by subject on the City’s and the District’s websites or other electronically retrievable public sources.
- 14. If a court of competent jurisdiction holds any provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties’ rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict and shall be deemed modified to conform to such statutory provision.
- 15. This Agreement, together with Exhibit A, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the Dock Extension, with the exception of the Existing ILA, which remains in effect in accordance with its terms. This Agreement may be amended, modified, or added to only by written instrument signed by both parties. To the extent there is a conflict between this Agreement and the Existing ILA or the January 2018 Memorandum of Agreement between the City and the District regarding the Float (“MOA”), this Agreement shall control and, in the case of the MOA, constitute an amendment thereof.
- 16. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action to enforce or interpret this Agreement shall lie exclusively in the Superior Court of Washington for Kitsap County. This section will survive the termination of this Agreement and be applicable and enforceable thereafter.

BAINBRIDGE ISLAND METROPOLITAN
PARKS & RECREATION DISTRICT

CITY OF BAINBRIDGE ISLAND

By: _____

Terry Lande, Executive Director

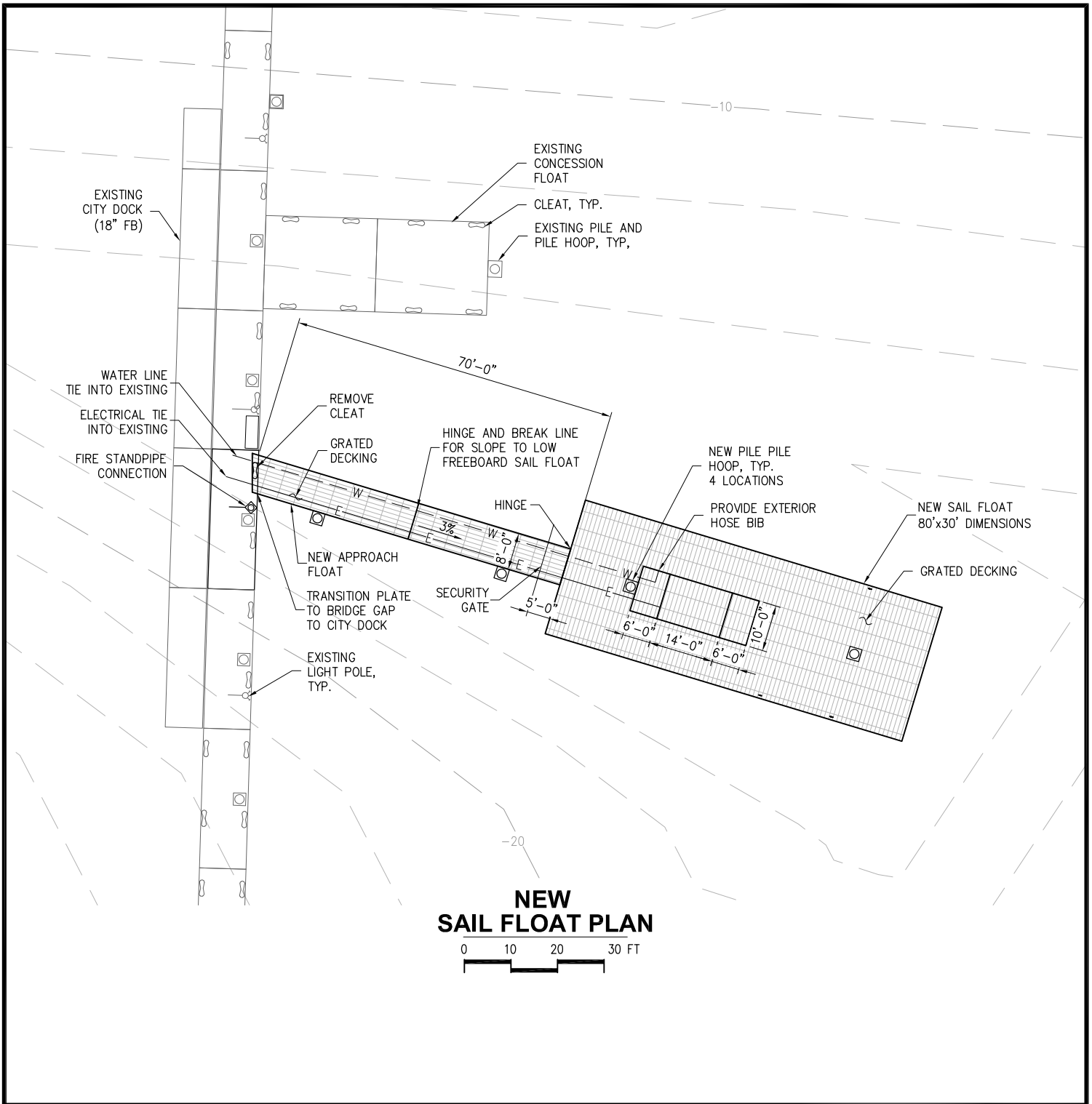
Date: _____

By: _____

Blair King, City Manager

Date: _____

EXHIBIT A
 Concept Drawing of Dock Extension



**NEW
 SAIL FLOAT PLAN**



K:\2021\214036.01 BI Parks Sail Float\Permit\214036.01-04.dwg

PURPOSE:

REPLACE AND RELOCATE THE BAINBRIDGE ISLAND SAIL FLOAT TO CITY DOCK

DATUM: 0.00' MLLW

LAT: 47°37'15"N LONG: 122°31'02"W

ADJACENT PROPERTY OWNERS:

CITY OF BAINBRIDGE ISLAND
 WASHINGTON DEPARTMENT OF TRANSPORTATION
 QUEEN CITY YACHT CLUB

**BAINBRIDGE ISLAND
 METRO PARKS AND
 RECREATION DISTRICT**

**NEW
 SAIL FLOAT PLAN**

625 WINSLOW WAY E
 BAINBRIDGE ISLAND,
 WA 98110

PROPOSED:

BAINBRIDGE ISLAND SAIL FLOAT REPLACEMENT

IN: EAGLE HARBOR

AT: CITY OF BAINBRIDGE ISLAND

APPLICATION BY:

BAINBRIDGE ISLAND METRO PARKS & RECREATION DISTRICT

SHEET 4 of 6 DATE: JUNE 2022

AQUATIC LANDS SUBLEASE AGREEMENT

THIS AQUATIC LANDS SUBLEASE AGREEMENT (“Agreement”) is entered into between the City of Bainbridge Island (“City”), a Washington State municipal corporation, and the Bainbridge Island Metropolitan Park & Recreation District (“District”), a Washington State municipal corporation.

In entering into this Agreement, the City and the District (the “Parties”) recognize and agree to the following recitals:

- A. On May 4, 2017, the City and the Washington State Department of Natural Resources (“DNR”) entered into Aquatic Lands Lease No. 20-A85592 (“Lease”) for an area within Eagle Harbor (“Lease Area”). On that same day, the City and DNR agreed to the Aquatic Lands Agreement Amendment (“Lease Amendment”).
- B. The Lease authorizes the City’s use of the area for activities related to the City Dock and the Open Water Marina. The City pays DNR a significant amount for annual rent for this leased area, and the City is responsible for the activities and structures within this area.
- C. The lease amount paid by the City to DNR is based on the type of activities and structures that are present within the lease area.
- D. The District owns a sailing float that is moored within the City’s Lease Area. The float has been in this location for more than ten (10) years and it pre-dates the City’s Lease. The float is approximately 1,600 square feet.
- E. The District uses the sailing float to store and launch small sailboats for youth and adult sailing programs.
- F. The City would prefer that the sailing float be relocated in order to provide more room for the additional boating activity that is expected from the new, larger dock facilities. Two options are under consideration: (1) replacing the sailing float with an extension to the recently constructed City Dock (“Option 1”); and (2) relocating the sailing float to an area that is further to the east of the City Dock (“Option 2”). (Option 1 and Option 2 are referred to herein collectively as “the Options.”) Which one of the Options is implemented will be within the sole discretion of the District and will depend on many considerations, including, without limitation, cost, feasibility, environmental and permitting.
- G. The size and construction of the sailing float are such that the float cannot meet the requirements of the City’s Shoreline Master Program (“SMP”) and, as a result, the float cannot be moved from the current location without significant reconstruction or replacement and may potentially require a conditional use permit.

H. To move to a new location, the sailing float will also need to meet regulatory and permit requirements from other agencies, including the Washington State Department of Fish and Wildlife (“DFW”) and the United States Army Corps of Engineers. If a proposed new location is on state-owned aquatic lands, DNR would need to review such a proposal and, at DNR’s discretion, authorize such use through a lease or other agreement.

I. The Parties agree that it is in the best interests of both entities for the District to take the necessary actions to implement one of the Options and, in connection therewith, if necessary, negotiate and execute a direct lease with DNR.

J. The Parties agree that implementation of either one of the Options will likely involve significant cost to the District and take an extended period of time.

K. The Parties agree that it is in the best interests of both entities to enter into this Agreement to allow the District’s activities to continue during the period of time that is required to implement one of the Options.

L. The purposes of this Agreement, in accordance with the Memorandum of Agreement dated January 25, 2018, are to 1) effectuate Section 9 of the Interlocal Agreement for Relocation of Sailing Float between the City and the District dated May 25, 2022 directing execution of this Agreement, and 2) give the District sufficient time to implement one of the Options.

NOW, THEREFORE, the Parties agree as follows:

1. Consistency with Aquatic Lands Lease. The Lease contains certain requirements that must be incorporated into any sublease, including this Agreement. Such requirements are enumerated and incorporated herein as follows:

A. The Parties agree that this Agreement is consistent with and subject to all the terms and conditions of the Lease executed by DNR and the City on May 4, 2017, and any amendments thereto. Any mention of a specific section of the Lease in this Agreement shall not be construed as limiting the general applicability of the Lease to this Agreement.

B. In the event of a conflict between the terms of this Agreement and the Lease, the terms of the Lease will control.

C. The term of this Agreement, including any period of time covered by a renewal option, will end before the termination date of the Lease, including any renewal term. The term of this Agreement is addressed in Section 3 of this Agreement.

D. This Agreement shall terminate if the Lease terminates for any reason. Grounds for termination of this Agreement are addressed in Section 3 of this Agreement.

E. By executing this Agreement, the District acknowledges receipt of a copy of the Lease. The District also acknowledges receipt of a copy of the Lease Amendment.

F. The District is prohibited from prepaying any rent owed to the City under this Agreement. The rental amount that the District must pay to the City under this Agreement is addressed in Section 4 of this Agreement.

G. This Agreement is between the District and the City. There is no privity of contract between the District and the State of Washington.

H. The District must remove its improvements and personal property upon termination of this Agreement. The District's personal property is addressed in Section 8 of this Agreement.

I. The sailing float is a permitted use under the Lease.

J. The District is required to meet all obligations of the City under Section 10 (Indemnification, Financial Security, and Insurance) of the Lease. Indemnification is addressed in Section 9 of this Agreement. Insurance is addressed in Section 10 of this Agreement.

K. The District shall comply with the requirements of Section 4 of Attachment B (Insurance to the Lease).

2. Grant of Sublease

A. The City grants to the District for the term of this Agreement the right and privilege to moor and operate the sailing float in the area described on **Attachment A** ("Sublease Area"), attached hereto and incorporated herein by this reference, subject to the terms and conditions set forth in this Agreement. NOTE: The Sublease Area does not include the hatched "Excepted area" depicted on **Attachment A**.

B. As part of the District's operation of the sailing float in the Sublease Area, the District may moor, for the term of this Agreement, one vessel less than twenty (20) feet in length to the City Dock for use as a safety boat. The City shall designate a specific area on the City Dock for such purposes and the City, at its sole discretion, may change the area so designated as needed upon written notice to the District of the change.

C. The District shall make no use of the Sublease Area other than that authorized in this Section.

3. Term and Termination

A. Unless earlier terminated as provided in this Agreement, the term of this Agreement shall be identical to the term of the Lease. Accordingly, if the Lease is extended or renewed, this

Agreement shall automatically extend or renew so that the term of this Agreement remains identical to the term of the Lease.

B. This Agreement does not provide a right of renewal.

C. The following acts or omissions shall each individually constitute a default and material breach of this Agreement by the District:

- i. The failure to comply with the provisions of the Lease, or any amendments thereto;
- ii. The violation of any law, ordinance, rule, regulation, order, or directive;
- iii. The assignment of the District's interest in this Agreement without the prior written consent of the City;
- iv. The failure to perform or the violation of any other condition or covenant of this Agreement.

D. If the District commits any act or omission specified in Section 3 of this Agreement, then the City may terminate this Agreement following written notice stating:

- i. The nature of the act or omission;
- ii. The number of days (which shall be a reasonable time not to exceed sixty (60) days after the date of the notice) within which such failure must be corrected or the violation must be ceased or remedied to avoid termination; and
- iii. The City's intent to terminate this Agreement if the act or omission is not corrected within the stated time.

E. Despite any other provision of this Agreement, this Agreement shall automatically terminate if the Lease terminates for any reason.

F. Despite any other provision of this Agreement, the District may terminate this Agreement upon written notice to the City if the District implements one of the Options.

4. Rental Amount

A. The District shall annually pay to the City Two Thousand Three Hundred Eighty-Three Dollars (\$2,383), which represents the rent charged to the City by DNR for the sailing float and the associated non-water dependent uses. This amount shall be paid quarterly to the City in equal installments.

B. If DNR adjusts the annual rent owed by the City under the Lease, then the District agrees to immediately enter into a written amendment to this Agreement with the City to adjust the annual rent owed under this Agreement to reflect the adjustments made by DNR.

C. The District may not prepay any amount to the City.

5. Other Expenses

A. The District shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Sublease Area, including, but not limited to, taxes arising out of the activity or business conducted in the Sublease Area, taxes levied on its property, equipment, and improvements in the Sublease Area, and taxes on the District's interest in this Agreement and any leasehold interest deemed to have been created under Chapter 82.29A RCW. In the event the State of Washington makes any demand on the City for payment of leasehold excise taxes resulting from the District's occupancy of the Sublease Area or withholds funds due to the City to enforce collection of leasehold excise taxes, the District shall, at its sole expense, contest such action and indemnify the City for all sums expended by, or withheld by the State from, the City in connection with such taxation; provided, that District may pay any such tax in lieu of contesting it or indemnifying City.

B. If in good faith, the District may contest any tax or assessment at its sole cost and expense. At the request of the City, the District shall furnish reasonable protection in the form of a bond or other security, satisfactory to the City, against loss or liability resulting from such contest.

C. The District shall pay all fees charged for utilities required or needed by the District in its operation of the sailing float in the Sublease Area.

D. If required by the City, the District shall furnish to the City receipts or other appropriate evidence establishing the payment of amounts this Agreement requires the District to pay.

6. Relocation or Replacement of the Sailing Float

A. The District agrees to make best efforts to implement one of the Options.

B. The City acknowledges that both Options and the continued use of the sailing float require public access, primarily provided by way of the City's Waterfront Park. The City agrees to maintain public access to Waterfront Park and the sailing float per City means and methods. Nothing in this Agreement shall, however, be construed to require the City to make any improvements to the current public access. Any improvements made necessary by the District's use shall be made at the District's sole cost and expense.

C. The City anticipates and agrees to the District's use of Waterfront Park for sailing float-related activities, including the physical implementation of one of the Options, project-related environmental mitigation requirements within the intertidal areas of Waterfront Park, and the on-going ingress and egress of District maintenance staff and of recreation program participants.

B. Before conducting any work on the sailing float, the District shall obtain DNR's written consent in accordance with Section 7.3 of the Lease. The District shall also obtain any required permits from the City and other public agencies at the District's sole cost and expense.

C. If, during the term of this Agreement, the District reconstructs or replaces the sailing float, the District shall comply with the following requirements:

i. The District shall replace the sailing float's existing treated wood decking with non-toxic materials such as untreated wood, steel, concrete, or recycled plastic, or existing wood may be encased in a manner that prevents leaching of contaminants into surface water. The District may use ACZA treated wood to replace above water structural framing. The District shall never use CCA, ACQ, or creosote-treated wood at any location.

ii. The District shall replace the sailing float's existing encapsulated floatation materials with encapsulated floatation materials.

iii. The District shall replace anchorage systems with systems using embedded anchors and midline floats.

iv. The District shall install grating on at least fifty (50) percent of the surface area of the sailing float; grating material must have at least sixty (60) percent functional open space or forty (40) percent or greater multi-directional open space.

v. The District shall comply with all the requirements of Section 7 of the Lease to the same extent as the City.

8. District's Personal Property

A. The District, at its sole cost and expense, shall keep the Sublease Area, and all of the District's personal property located in the Sublease Area, in a neat and sanitary condition in accordance with all applicable state and local public health standards.

B. The District shall not permit any excessive or objectionable noise, odor, dust, vibration, or similar substance or condition to remain on or be emitted from the Sublease Area. The District

shall not create any nuisance in or adjacent to the Sublease Area, the City Dock, or Eagle Harbor Waterfront Park.

C. The District must remove the sailing float and all of the District's other personal property from the Sublease Area upon termination of this Agreement. If the District fails to remove the sailing float or any of its personal property required to be removed under this Agreement, the City may remove and store such property at the District's expense.

D. When maintaining or cleaning its personal property in the Sublease Area, the District agrees to not discharge any cleaner or other chemicals into the water. If cleaners or other chemicals are used, no visible suds or discoloration of the water are permitted. The District shall spot clean or use small amounts of phosphate-free and biodegradable soaps only when necessary and provided that no cleaner or other chemical is discharged into the water.

E. The District shall comply with Section 8 of the Lease to the same extent as the City.

9. Indemnification.

A. The District 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 arise out of the District's use of the Sublease Area, or from the conduct of the District's business, or from any activity, work or thing done, permitted, or suffered by the District in or about the Sublease Area, except to the extent such harm shall have been caused, in whole or in part, by the negligence or willful act of the City, in which event the District's indemnification obligation shall be reduced in proportion to the City's culpability.

B. The District shall indemnify, defend, and hold harmless the State of Washington, its employees, officers, and agents to the same extent as the City must under Section 10.1 of the Lease.

10. Insurance.

The District shall secure and maintain, at its sole expense, insurance as specified in **Attachment B**, attached hereto and incorporated herein by this reference.

11. Parking. This Agreement does not give the District, its agents, officers, employees, or customers any right or privilege to park motor vehicles anywhere in Eagle Harbor Waterfront Park. Such parking is only allowed to the extent permitted by the City.

12. Access to Boat Ramp, City Dock, and Boat-Trailer Parking. The District shall not interfere with access to or from any part of the City Dock, boat ramp, or boat-trailer parking.

13. Notices and Deliverable Materials. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City: City Manager
City of Bainbridge Island
280 Madison Ave. North
Bainbridge Island, WA 98110

To the District: Executive Director
Bainbridge Island Metro Park & Recreation District
11700 Meadowmeer Circle
Bainbridge Island, WA 98110

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

14. Disclaimer of Condition of the Sublease Area. The City disclaims all representations, statements, and warranties, express or implied, with respect to the condition of the Sublease Area or the use and occupancy of the Sublease Area, other than those contained in this Agreement. The District accepts the Sublease Area in its condition on the effective date of this Agreement.

15. Liens and Encumbrances. The District shall keep the Sublease Area free and clear of any liens and encumbrances. At the request of the City, the District shall deliver to the City written proof of the payment of any item which could be the basis of such a lien, if not paid.

16. City's Access to Sublease Area. The City may access the Sublease Area at all reasonable times to inspect the same and to make any repair, improvement, alteration, or addition to any property owned by or under the control of the City, but this right of access shall not impose on the City any obligation to make any repair, alteration, addition, or improvement. The City shall have the right to use any means that the City deems proper in an emergency to obtain entry to the Sublease Area, without any liability. Any entry to the Sublease Area obtained by the City in such circumstances shall not be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Sublease Area or a termination of the District's right to use and occupy the Sublease Area or any portion thereof.

17. Books, Records, and Audit. The District shall maintain all books, records, documents, and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices and shall maintain an accounting system having controls governing inventories and receipts, and detailed records of all income and expenses of all business generating gross receipts under this Agreement. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by

representatives of the City and/or the Washington State Auditor at all reasonable times, and the District shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts, and records if necessary to conduct or document an audit. The District shall preserve and make available all such books of account and records for a period of three (3) years after the expiration or termination of this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the District shall provide the City with written notification of the discrepancy, and any necessary financial adjustments shall be made within thirty (30) calendar days of notification.

18. Compliance with Laws.

- A. The District, at its sole cost and expense, shall perform and comply with all applicable federal, state, and local laws, regulations, and rules.
- B. The District shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and shall comply with all requirements thereof.
- C. The District agrees to comply with all federal, state, and local laws prohibiting discrimination with regard to race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap.

19. Assignment, Transfer, or Sublease. The District shall not assign or transfer this Agreement or any rights under this Agreement, or sublease any part of the Sublease Area, without the prior written consent of the City. No right, privilege, or interest conferred in this Agreement shall pass to any trustee or receiver in bankruptcy or to any receiver or assignee for the benefit of creditors; nor shall this Agreement or any rights, privilege, or interest be transferable by operation of law or proceeding of any court.

20. No Relationship Established. The City shall in no event be deemed to be a partner, associate, or joint venturer of the District. The District is not an agent of the City for any purpose whatsoever. The District shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

21. Amendments. No modifications or amendment of the terms of this Agreement shall be effective unless in writing and signed by the Parties. The Parties expressly reserve the right to modify this Agreement by mutual written agreement.

22. No Waiver. A waiver by either the City or the District of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not

in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

23. Invalidity of Particular Provisions. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

24. Binding Effect. The terms and provisions of this Agreement apply to bind the Parties, their legal heirs, representatives, successors, and assigns.

25. Entire Agreement. This Agreement contains all of the covenants, promises, agreements, and conditions, either oral or written, between the parties with respect to the subject matter of this Agreement.

26. Survival. Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

27. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

28. Venue. The venue for any action to enforce or interpret this Agreement shall lie exclusively in the Superior Court of Washington for Kitsap County, Washington.

29. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the later of the signature dates included below:

BAINBRIDGE ISLAND METROPOLITAN
PARK & RECREATION DISTRICT

CITY OF BAINBRIDGE ISLAND

Date: _____

Date: _____

By: _____

By: _____

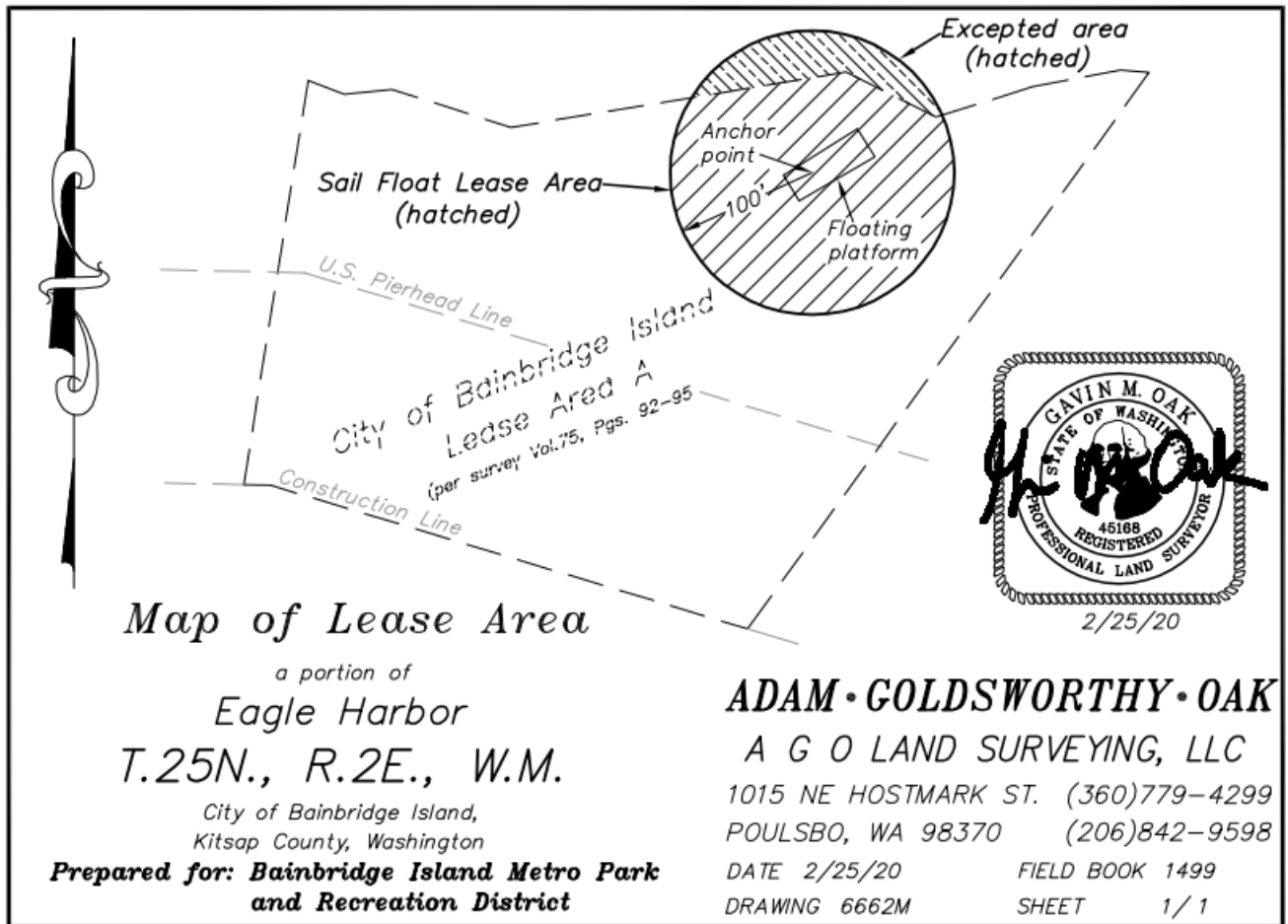
Terry Lande, Executive Director

Blair King, City Manager

**Attachment A
Sublease Area**

SAIL FLOAT LEASE AREA DESCRIPTION

A lease area being a 100.00' radius circle located in Eagle Harbor, Township 25 North, Range 2 East, W.M., City of Bainbridge Island, Kitsap County, Washington, the center point of said circle is described as follows: Beginning at a Washington State Department of Transportation Brass Disk Monument in case designated as "Eagle" and shown on the survey recorded in Volume 75, Pages 92-95 survey records of Kitsap County, from which a Washington State Department of Transportation Brass Disk Monument in case designated as "Eagle AZ" and shown on said survey bears South 12°30'54" East 2989.65 feet; Thence South 68°42'43" West 1330.48 feet to the said center point and the terminus. EXCEPT that portion of said circle lying outside of the City of Bainbridge Island Lease Area A as shown on the survey recorded in Volume 75 of surveys, Pages 92-95, records of Kitsap County, Washington.



Attachment B Insurance Requirements

A. Insurance Term

The District shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the District's operation and use of the Sublease Area

B. No Limitation

The District's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the District to the coverage provided by such insurance, or otherwise limit the City's or the State of Washington, Department of Natural Resources' ("State's") recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The District shall obtain insurance of the types and coverage described below:

1. 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 and the State shall be named as additional insured on Concessionaire's Commercial General Liability insurance policy using ISO Additional Insured-Mangers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing at least as broad coverage. In the alternative either party to this agreement may fulfill the insurance obligations contained herein by maintaining membership in and coverage provided by a self-insurance or insurance pooling program pursuant to Chapter 48.62 RCW. In this regard, the parties understand that the party to this agreement who is a member of such program is not able to name the other party as an "additional insured" under its coverage provided by the self-insurance program.
2. Property insurance shall be written on an all risk basis.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Builders Risk insurance covering interests of the City, the District, Contractor, Subcontractors, and Sub-subcontractors in the work during any period in which construction is in progress. 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 District. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the District and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the District. The Builders Risk insurance shall be maintained until the City has granted substantial completion of the project.

5. Marine insurance covering the District's vessel that will be moored to the City Dock.
6. Longshore and Harbor Workers' and Jones Act coverage as required by federal law.
7. Employers' Liability insurance as required by Section 10.3(c) of the Lease.

D. Minimum Amounts of Insurance

The District shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$4,000,000 general aggregate.
2. Property insurance shall be written covering the full value of the District's property and improvements with no coinsurance provisions.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.
5. Marine insurance as required by Section 10.2(c)(4) of the Lease.
6. Longshore and Harbor Workers' and Jones Act coverage as required by federal law.
7. Employers' Liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease.

E. Other Insurance Provisions

The District's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City and the State. Any insurance, self-insurance, or self-insured pool coverage maintained by the City or the State shall be excess of the District's insurance and shall not contribute with it.

F. Acceptability of Insurers

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

G. Verification of Coverage

The District shall furnish the City and the State with original certificates and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the District.

H. Waiver of Subrogation

District and 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 said building. This release shall apply only to the extent that such claim, loss, or liability is covered by insurance. Except as prohibited by law, District waives all rights of subrogation against the State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Agreement.

I. Public Entity's Property Insurance

The City shall purchase and maintain during the term of this Agreement all-risk property insurance covering the City Dock, including the Sublease Area, for its full replacement value without any coinsurance provisions.

J. Notice of Cancellation

The District shall provide the City and the State with written notice of any policy cancellation within two business days of their receipt of such notice.

K. Failure to Maintain Insurance

Failure on the part of the District to maintain the insurance as required shall constitute a material breach of this Agreement, upon which the City may, after giving five business days' notice to the District to correct the breach, terminate this Agreement, 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.

L. City Full Availability of District Limits

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