

Direct Phone (206) 447-2905  
Direct Facsimile (206) 749-1915  
pat.schneider@foster.com

January 5, 2021

**By Email to the City Clerk and Hand Delivery to the Drop Box at City Hall**

City of Mercer Island Hearing Examiner  
c/o City Clerk  
9611 SE 36<sup>th</sup> Street  
Mercer Island, WA 98040

Re: Appeal of Conditions of Permit Approval for Permit No. 2010-186, issued  
December 22, 2020

Dear City Clerk:

The Central Puget Sound Regional Transit Authority (“Sound Transit”) appeals multiple Conditions of Permit Approval for Right-of-Way Use Permit No. 2010-186 (the “Permit”). To the extent the City of Mercer Island (“the City”) is applying these conditions of approval to the other permits that the City approved the same day in the same document – which the City’s approval identifies as Building, Engineering, “Landscaping, Trees, Irrigation,” Street Engineering, Tree, and Fire Protection permits – and to the extent the Hearing Examiner has jurisdiction over these additional permits, Sound Transit also appeals the same conditions of approval of these additional permits.

The City’s decision comprises an email from Patrick Yamashita dated December 22, 2020, which states that the permit has been approved, and the Conditions of Approval that are attached to Mr. Yamashita’s email. These two decision documents are attached to this Appeal as Exhibit A.

The conditions that Sound Transit appeals are without basis in the City’s code, are prohibited by State law, and constitute an abuse of the police power by the City, which is using its regulatory authority to impose upon Sound Transit the City’s evolving interpretation of a contract that is the subject of litigation in superior court.

The City’s inclusion of patently unlawful conditions of approval in the Permit, and the delay occasioned by this appeal, cause harm to the public health, safety, and welfare rather than promote these public goods, by preventing Sound Transit from timely commencing construction of critical infrastructure for bus/rail integration on North Mercer Way adjacent to the Mercer

Island Light Rail Station (the “Project,” and referred to by the City as “Mercer Island Transit Integration Project”).

Sound Transit’s address is:

401 South Jackson St.  
Seattle, WA 98104-2826

Sound Transit submits, together with this appeal, the appeal fee of \$1,452 adopted by Resolution No. 1593.

### **FACTUAL BACKGROUND**

In 2011, the Sound Transit Board selected the alignment and station locations for construction of the East Link project from downtown Seattle to the cities of Mercer Island, Bellevue and Redmond. The East Link project is an essential public facility under the Growth Management Act. Sound Transit is currently scheduled to complete construction of East Link and commence passenger service to these cities by June 2023.

For East Link to succeed, riders must be able to reach the trains, and Sound Transit is constructing the facilities at multiple stations that are needed to accommodate the integration of Sound Transit and King County Metro’s bus routes with East Link light rail stations. Eastside commuters who otherwise lack convenient access to a light rail station will ride busses to the Mercer Island Station, then transfer to Sound Transit’s trains for the final leg of their commute to Seattle. The Mercer Island Transit Integration Project is a critical element of East Link, is essential for this bus/rail integration to occur, and is the subject of this appeal.

Construction of the Mercer Island light rail station in the I-90 right-of-way is 95% complete and is not part of this appeal.

In 2017 the City and Sound Transit (and the Washington State Department of Transportation) litigated the City’s prior efforts to stop construction of East Link, and they tentatively settled this litigation, which is still pending in superior court, by means of a Settlement Agreement that expressed the City’s preferred configuration for bus-rail integration at the location where Sound Transit is attempting to construct it today: at 77<sup>th</sup> Avenue SE and North Mercer Way. This Settlement Agreement is not otherwise relevant to this Appeal because it is a contract enforceable in superior court under the law of contract, and it does not (and could not) give the City any regulatory authority that the City does not have under the Mercer Island City Code (MICC) and state law.

The 77<sup>th</sup> Avenue SE configuration chosen by the City required Sound Transit to acquire two private properties adjacent to the T-intersection of 77<sup>th</sup> Avenue SE and North Mercer Way (referred to by the City as the “Tax Lots”). Sound Transit is in the process of finalizing acquisition of these Tax Lots to allow construction of the Project facilities including a new traffic roundabout, sidewalk, landscaping, stormwater vault, driveway, and retaining wall. The Project includes an area for buses from the east side of King County to drop off passengers and layover on the north side of North Mercer Way. These buses then will travel around the roundabout and

pick up passengers on the south side of North Mercer Way for the trip back to the east side of King County.

The Project requires bus layovers and passenger pick-up or drop-off on both sides of North Mercer Way, as the Mercer Island City Manager concluded after participating with Sound Transit and King County Metro for over a year in the collaborative process required by the Settlement Agreement to explore other options. At the conclusion of that collaborative effort, the City, Sound Transit, and Metro all agreed that pick-up and drop-off and a layover area on the north side of North Mercer Way are all required to meet Metro's operational needs. On April 25, 2019 in Resolution No. R2019-12, the Sound Transit Board authorized acquisition of the Tax Lots, including acquisition by condemnation, and Sound Transit then advanced the design of the Project accordingly. The plans that Sound Transit submitted with its applications are at 100% design and ready to issue for bid.

Sound Transit and City staff first began discussing permitting for the Project at a meeting in February 2020, and met periodically thereafter to refine the Project plans and permit requirements. At the February 2020 meeting, City staff and Sound Transit discussed Sound Transit's 30% Project design plans and the anticipated permitting requirements. Permit review was complicated by the fact the Project proposes construction on existing City right-of-way *and* on the Tax Lots. City staff decided that the City would process all permit applications under a Site Development Plan ("SDP"), which is a permit that is not defined in the City's code and that the City has applied to both private property and rights-of-way.

In a follow-up meeting in June 2020, City staff proposed using the SDP as a "master permit" that would encompass all permits necessary to entitle the Project—building permits for retaining walls and a stormwater vault, clearing and grading permits, demolition permits, tree permits, and so forth. At that meeting the parties also discussed whether and how Sound Transit would dedicate all or portions of the Tax Lots to the City as right-of-way.

In September 2020, City staff changed course and unilaterally dropped its proposal to use an SDP. At a meeting that month, City staff also informed Sound Transit for the first time of its position that the City Council rather than the City Manager would need to approve Sound Transit's conveyance of the Tax Lots to the City before the City would accept the property as right-of-way.

Finally, on December 22, 2020, the City notified Sound Transit that it had approved with conditions seven individual permits for the Project, including a building permit and ROW Permit (Permit No. 2010-186). The ROW Permit contains the conditions identified below that are unsupported by the MICC and unlawful, which Sound Transit appeals herein.

Then on December 28, 2020, six days after approving Permit No. 2010-186 and the other permits that the City and Sound Transit agreed are needed, the City notified Sound Transit by email that it had "eliminated" the building permit and multiple tree permits from its requirements, even though it has not issued a new decision document and even though the MICC and state law require a building permit for the stormwater vault and for any retaining wall over four feet, which Sound Transit is constructing as part of the Project. As of the date of this appeal, the City has not explained this purported elimination of the building permit and tree

permits from its approvals, even though the City and Sound Transit agreed on the required approvals over the course of numerous permit coordination meetings and a formal pre-submittal conference with the City.

Sound Transit is on a strict schedule to complete construction of East Link. In order to adhere to its schedule, Sound Transit needs to issue the request for bids for the construction contract in January 2021, obtain Sound Transit Board approval of the construction contract for the Project in March 2021, issue a Notice to Proceed to the contractor and commence construction in April 2021, and complete construction in June 2022. Construction will take more than one year because the City is requiring Sound Transit to maintain two-way traffic on North Mercer Way throughout construction, and Sound Transit must comply with Mercer Island's stringent construction hours.

The City's issuance of unlawful conditions of approval requires this appeal and delays Sound Transit's initiation of Project construction and potentially delays the entire East Link project.

#### ASSIGNMENTS OF ERROR

The foregoing facts, and others that will be presented at the hearing, demonstrate that the decision is unlawful and wrong for the following reasons:

**Paragraph IV, Conditions A and E:** These conditions constitute substantial error, are unsupported by evidence in the record, and are in conflict with the standards for review of this action:

A. *"The applicant shall comply with the traffic control plan attached to this permit."*

E. *"Work that impacts traffic flow must be performed Monday – Friday 9:00 am – 3:30 pm, except legal holidays. Additional time restrictions may be added to this permit to mitigate construction impacts on traffic."*

Condition A is inconsistent with Condition E. The approved Traffic Control Plan (incorporated by reference in Condition A) and the Construction Management Plan for this construction project provide that the hours of construction are Monday-Friday, 7:00AM to 5:00PM, and Saturday from 9:00AM to 4:00PM (as needed), in accordance with Mercer Island City Code 8.24.020.Q. The hours of construction approved in Condition A are contradicted by Condition E, which states that "Work that impacts traffic flow" must be performed Monday – Friday 9:00AM to 3:30PM. In addition, Condition E does not make sense for a roadway construction project, and the approved Traffic Control Plan allows for daily single lane closures Monday through Friday and sometimes on Saturdays.

**Paragraph VII, Condition H:** This condition constitutes substantial error, is unsupported by evidence in the record, and is in conflict with the standards for review of this action.

H. *"Final asphalt restoration must be completed within 30 days of excavation unless an extension has been granted in advance. The limits of pavement*

*restoration in the public right of way shall be determined by the City Engineer prior to final inspection of the project.”*

This Condition H also contradicts the Traffic Control Plan dated December 11, 2020 that the City has approved, and this condition is impossible to comply with because construction of the roadway elements of the Project will extend beyond 30 days, as agreed to in the Traffic Control Plan. For example, Phase 2 of the Traffic Control Plan provides for approximately four months between excavation and reconstruction.

**Paragraph VII, Condition I:** This condition constitutes substantial error, is unsupported by evidence in the record, and is in conflict with the standards for review of this action.

*I: “Class B hot mix asphalt or polymer-modified cold asphalt (EZ Street or equal) shall be used for temporary asphalt patches. MC250 cold mix is not allowed. Temporary asphalt patches shall be marked ‘TEMP’ in white paint. Permanent pavement restoration shall be completed within 30 calendar days.”*

As described under Condition H above, the final sentence of Condition I is inconsistent with the Traffic Control Plan approved by the City because construction of the roadway elements of this Project will extend well beyond 30 days.

**Condition XIII.A:** This condition constitutes substantial error, is the result of proceedings materially affected by irregularities in procedure, is unsupported by evidence in the record, and is in conflict with the standards for review of the action. The Condition reads:

- A. *New North Mercer Way bus bay*  
*ROW permit application number 2010-186 proposes construction and use of a new curb cut on the north side of North Mercer Way with signage providing “No Parking (Bus only).” See e.g. Plan Sheets E07-CRP002, E07-CMP002, and E07-CMS002. Sound Transit has informed the City by letter from attorney Patrick Schneider dated October 20, 2020 that Sound Transit intends to “use this area as a bus bay for layovers and supplemental passenger drop-offs.”*  
*The use of the City’s ROW as a bus bay for layovers and passenger drop-off purposes are not uses authorized under a ROW permit in the Mercer Island City Code (MICC). Ch. 19.09. MICC. These uses also are prohibited by the terms of the 2017 Settlement Agreement Between the City of Mercer Island and The Central Puget Sound Regional Transit Authority (Sound Transit) for the East Link Project (“2017 Agreement”).*  
*Permission to construct the curb cut is denied for the reasons stated above.*

Sound Transit did not apply for a ROW permit in order to obtain City approval of its regional transportation facility or of its use of the City’s street for this facility, but in order to obtain City approval of the means and methods of construction. Sound Transit’s application and its plans comply with all applicable regulations that apply to such construction, and the City’s decision does not determine otherwise.

In addition, the October 20, 2020 letter from Sound Transit's attorney that the condition refers to simply confirmed what the City has known since 2019 through its participation in the collaborative process with Sound Transit and Metro, in which the City Manager acknowledged the need for and design of the Project that Sound Transit has been designing and preparing to build since that time.

Nothing in the City's code or state law authorizes the City to require Sound Transit or Metro to obtain a ROW permit from the City in order to use a public street for bus layovers and passenger drop-offs, which are regional transportation uses that state law prohibits the City from limiting. *See* RCW 35.58.330 (granting metropolitan municipal corporations the right to construct facilities on city streets without a franchise); RCW 81.112.100 (granting regional transit authorities the same authority to construct transit facilities as that granted to metropolitan municipal corporations); Wash. Const. Art. XI § 11. It is irrelevant that Chapter 19.09 MICC does not expressly authorize such uses, because the City cannot prohibit them and instead bears an affirmative duty to accommodate essential, regional uses and facilities. *See also, e.g.*, RCW 36.70A.200(1)(5) (identifying regional transportation facilities as essential public facilities and prohibiting development regulations that preclude their siting).

The City cites Chapter 19.09 MICC as the authority for its denial but does not cite any section within this Chapter, and no section authorizes denial. Chapter 19.09 is entitled "Property Development" and regulates construction within City right of way, but a permit issued under that chapter regulates how, not whether, a facility is constructed, and certainly not whether a regional essential public facility is constructed. No section of that chapter, or any other section of City code, authorizes City staff to prohibit the curb cut that Sound Transit has designed and is building consistently with City standards, and consistently with clear state law granting to Sound Transit and Metro the authority to site transit facilities within city rights-of-way. The curb cut is an essential element of the Project, and the City cannot deny an essential element of an essential public facility.

The City also bases its denial on the City's interpretation of a Settlement Agreement. The City abuses its police power by attempting to leverage a contract into regulatory authority. A non-discretionary permit, such as the ROW permit, must be issued when an application complies with code, and the City may not reject an application based on factors not found within the code. Here, City staff purports to reject the ROW permit application in reliance on its own interpretation of a contract that is foreign to the City's code and that the City knows that Sound Transit disputes because in October, 2020, the City filed a lawsuit asking the court to interpret this contract.

The City does not have jurisdiction to unilaterally resolve a dispute over the meaning of a contract by imposing permit conditions on an applicant. If the City believes that Sound Transit's proposed use of the right-of-way for bus layover and passenger drop-off violates a contract, the City's remedy lies in the superior court. City staff cannot pre-judge the outcome of a contractual dispute by refusing to take the ministerial act of issuing a non-discretionary permit that complies with applicable regulations.

The City also is estopped to deny Sound Transit's right to the curb cuts. The prior City Manager—the chief executive of the City under its council-manager form of government—

agreed with both the need for the Project and with its design, and Sound Transit has relied to its detriment on her approval since that time by designing the Project, undertaking the acquisition of private property needed for the Project, and preparing to construct the Project in order to finish East Link on schedule. Equity does not allow the City to disregard or rescind its City Manager's approval.

**Condition XIII.B:** The City's requirement that Sound Transit convey the Tax Lots to the City as ROW prior to commencing work on the Tax Lots, Paragraph XIII, Condition B, constitutes substantial error, is the result of proceedings materially affected by irregularities in procedure, is unsupported by evidence in the record, and is in conflict with the standards for review of this action. The Condition reads:

*B. Conveyance of real property as ROW*

*ROW permit application number 2010-186 includes use of real property that is not City ROW. Specifically, King County tax parcel numbers 5315101-838 and 5315101-837 (the "Tax Lots") located north of North Mercer Way ROW are included in the ROW permit application for construction of portions of the roundabout, sidewalk, retaining wall, storm drainage vault and other improvements (the "Improvements"). See e.g. Pln Sheets E07-CRP001, E07-CDP001, E07-UCP001, E07-CMP001, E07-CLP001, E07SWP001, E07-LHP001, and E07-LPP001. Real property must be City ROW to be included in a ROW permit. MICC 19.06.060.*

*ROW permit application number 2010-186 is therefore conditioned on the following:*

- 1) Prior to any activity for construction of the Improvements on the Tax Lots, Sound Transit shall obtain the City's acceptance of a conveyance by deed of the Tax Lots as City ROW.*
- 2) Approved work in the existing City ROW may proceed prior to conveyance by deed of the Tax Lots if Sound Transit is able to show convenient, continual, safe vehicle and pedestrian access through the construction zone and obtain written approval of said access from the City Engineer.*
- 3) Work approved on 80<sup>th</sup> Avenue SE is not affected by this condition.*

Condition B(1) is another egregious abuse of the City's police power because it attempts to use a ROW permit to regulate property that is not ROW, and attempts to coerce Sound Transit into conveying private property that Sound Transit does not yet own as a condition of commencing work on an essential public facility. In addition to having no basis in law or fact, this condition violates RCW 82.02.020 by imposing a requirement that is not reasonably necessary as a direct result of the Project.

Sound Transit did not seek a ROW permit to construct improvements to the *private* property that Sound Transit is acquiring but does not yet own; Sound Transit submitted a large permit application packet that included a ROW permit application as well as applications for grading, building, demolition, and other permits that apply to the property outside of the City's right-of-way. City staff and Sound Transit staff agreed that *all* the permits needed to construct the Project are the permits identified as "approved" in the decision that Sound Transit appeals:

- Building
- Right of Way
- Engineering
- Landscaping, Trees, Irrigation
- Street Engineering
- Tree
- Fire Protection

Chapter 19.06 limits the City's authority to require ROW permits for work within City ROW, and the other permits that the City has approved are sufficient to approve the work on the private property that Sound Transit is acquiring for the Project. These are all ministerial permits that the City approved because they comply with applicable regulations, and it is an extraordinary abuse of the City's regulatory authority for it to prohibit Sound Transit from commencing construction pursuant to these ministerial permits until Sound Transit conveys to the City real property that Sound Transit does not yet own.

In addition, this condition does not just require Sound Transit to convey real property that Sound Transit does not yet own, it requires Sound Transit to "obtain the City's acceptance" of the conveyance. Condition B(1) does not define what is meant by "obtain the City's acceptance," however City staff told Sound Transit staff that the City's position is that its City Council must approve the acceptance by legislative action. This condition thus converts a ministerial, non-discretionary decision into an entirely discretionary, legislative decision that creates power in the City Council to indefinitely delay and condition construction of a regional essential public facility until the Council decides that its parochial concerns are satisfied, in violation of its Code and the state laws authorizing regional transportation facilities and regional essential public facilities.

Sound Transit does not object to the dedication of the Project property as public ROW at the appropriate time, after construction is complete. There is no reason to require the dedication now, before acquisition is complete and construction begins, but for the City's unlawful attempt to regulate the private Tax Lots by means of a ROW Permit and thus create authority in the City Council to require exactions from Sound Transit that the City cannot require under its regulations. Sound Transit has no control over the City Council's schedule for taking up the issue of the ROW acceptance, or what terms the Council may seek to impose as a condition of its acceptance before it will allow construction to begin. The City is attempting to force Sound Transit to accede to demands that the City is without authority to impose through the permit process.

**Condition XIII.C.** The City's imposition of this condition on ministerial permits that requires Sound Transit to be "solely responsible" for all costs required for future maintenance, repair and replacement of facilities that will be owned by the City is not based on any authority in the City's code and constitutes substantial error, is unsupported by evidence in the record, is the result of proceedings materially affected by irregularities in procedure, and is in conflict with the standards for review of the action.

C. Operations and Maintenance Agreement



Pursuant to the 2017 Agreement, Sound Transit is solely responsible for all costs required to construct, implement, and operate the systems and facilities authorized under ROW permit number 2010-186. Prior to final inspection and acceptance by the City of the work and improvements authorized by ROW permit number 2020-186, Sound Transit shall obtain the City's agreement to an Operations and Maintenance Agreement wherein Sound Transit agrees to reimburse the City for the future costs incurred for maintenance, repair and replacement of these systems and facilities. Upon final inspection and acceptance, Sound Transit must also provide the City with a Bill of Sale for the roundabout related infrastructure.

Nothing in the City's Code authorizes the City to condition non-discretionary permits for the construction of an essential public facility on compliance with an obligation to indefinitely maintain City property on behalf of the City. This condition is another abuse of the City's regulatory authority in an attempt to obtain leverage over Sound Transit for negotiations that have nothing to do with whether Sound Transit's applications comply with the regulations applicable to the ministerial permits at issue.

#### **Desired Outcome**

Pursuant to MICC 19.15.130.G.1.b, Sound Transit respectfully requests that the Hearing Examiner delete the permit conditions objected to above and approve the ROW permit and the other permits that the City approved at the same time, as modified by the deletion of these conditions.

The undersigned attorneys are the representatives of Sound Transit for purposes of this appeal. Please communicate with them regarding the hearing date and any pre-hearing matters.

Sincerely,

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CENTRAL PUGET SOUND REGIONAL  
TRANSIT AUTHORITY

*s/ Stephen G. Sheehy*  
Stephen G. Sheehy, WSBA #13304  
Telephone: (206) 398-5000  
Email: [stephen.sheehy@soundtransit.org](mailto:stephen.sheehy@soundtransit.org)

FOSTER PEPPER PLLC

*s/ Patrick J. Schneider*  
Patrick J. Schneider, WSBA #11957  
Steven J. Gillespie, WSBA #39538  
Michelle Rusk, WSBA #52826

Mercer Island Hearing Examiner

January 5, 2021

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Telephone (206) 447-2905

Email: [pat.schneider@foster.com](mailto:pat.schneider@foster.com);

[steve.gillespie@foster.com](mailto:steve.gillespie@foster.com)

[michelle.rusk@foster.com](mailto:michelle.rusk@foster.com)

Encl.

**Pat Schneider**

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**From:** Yamashita, Patrick <patrick.yamashita@mercergov.org>  
**Sent:** Tuesday, December 22, 2020 4:01 PM  
**To:** Below, Matthew  
**Cc:** Yamashita, Patrick; Holly Mercier  
**Subject:** Mercer Island Transit Integration Project (Permit 2010-186) Notification of Decision  
**Attachments:** 2010-186 CPA.pdf

**CAUTION:** This email originated from a contact outside Sound Transit. Remember, do not click any links or open any attachments unless you recognize the sender and know the content is safe. Report any suspicious email by clicking the “fish” button in Outlook. Thank you! ST Information Security


**Project:** Mercer Island Transit Integration Project  
**Location:** 7714 North Mercer Way  
Mercer Island, WA 98040

**Permit Application Number:** 2010-186  
**Application Completeness Date:** November 30, 2020  
**First Review - Days Expended:** 4 Days (November 30-December 4)  
**Second Review – Days Expended:** 3 Days (December 14-17)  
**Third Review – Days Expended:** 2 Days (December 21-22)  
**Total Review – Days Expended:** 9 Days  
**Permit Review Status:** **Approved with conditions, except item XIII.A in the Conditions of Permit Approval is denied.**

The City of Mercer Island Community Planning and Development Department has completed the third review of your drawings for conformance with applicable codes, standards, and regulations. The permit has been approved with the Conditions of Permit Approval that are attached hereto. Over the next several days, permit center staff will be processing the permit and preparing it for issuance.

<b>Building:</b>	APPROVED
<b>Right of Way:</b>	APPROVED
<b>Engineering:</b>	APPROVED
<b>Landscaping, Trees, Irrigation:</b>	APPROVED
<b>Street Engineering</b>	APPROVED
<b>Tree:</b>	APPROVED
<b>Fire Protection:</b>	APPROVED

- WCI (Waiting for Customer Information): the comments from that review discipline are included within the ePlan drawing file noted above.
- APPROVED: indicates there are no correction items for that review discipline.
- NA (Not applicable): Review discipline is not scheduled to review this project.

Holly Mercier  
Permit Services Manager  
City of Mercer Island - Community Planning & Development  
206.275.7707 | [mercerisland.gov/cpd](http://mercerisland.gov/cpd) | 

*Due to the COVID-19 outbreak, Community Planning and Development has modified our operations. City Hall and the Permit Center are closed to the public. There is no “walk in” permit service; staff are working remotely and services are*

being continued via remote operations. More information is available on the City's website: [www.mercerisland.gov/cpd](http://www.mercerisland.gov/cpd).  
Please contact us by phone for general customer support at 206-275-7626.

Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW)

# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | [www.mercergov.org](http://www.mercergov.org)

INSPECTION REQUESTS: Online: [www.mybuildingpermit.com](http://www.mybuildingpermit.com) VM: 206.275.7730



## CONDITIONS OF PERMIT APPROVAL

Date: December 22, 2020 Permit Number: 2010-186  
Name: Sound Transit Mercer Island Transit Address:  
Integration Project

**These conditions are part of your plan approval. Failure to comply could result in a stop work order and/or fine. This document must be read and signed by the owner/representative prior to construction.**

### I. GENERAL

- A. This permit does not authorize construction or other activity in violation of any law, expressly including the Governor's Emergency Proclamations and related Guidance Memoranda.
- B. These conditions are part of your plan approval. Failure to comply could result in a stop work order and/or fine. This document must be read and signed by the owner/representative prior to construction.
- C. A separate permit is required for:
  - 1) Demolition
  - 2) Side Sewer Disconnect
  - 3) Side Sewer Relocation/Modification (if side sewer is modified)
  - 4) Water Service Abandonment
  - 5) Underground Fire/Fire Hydrant
  - 6) Plumbing/Irrigation
  - 7) Structural analysis of stormwater/detention vault (deferred submittal).
  - 8) Temporary shoring (deferred submittal).
- D. The approved plans and all related permits must be on site at all times. Place in a protected, but available location.
- E. Build from the permitted set of plans only. Do not remove any attachments to the plans.
- F. These permits are issued based on the assumption and certification that the owner controls all rights to develop the project site as proposed.
- G. Inspections performed outside of the normal hours of 8am-3:30pm on weekdays will require an overtime inspection fee. Saturday inspections require a two week minimum advance notice.
- H. The City requires a five-day advanced notification for final inspections.
- I. Concrete mixers and concrete pumbers are not to be washed out into any catch basin or onto public property.
- J. Business Licenses are required. A business license from the City of Mercer Island is required for all subcontractors that will be conducting, maintaining, operating or engaging in business within the City limits during any tax year; this includes all subcontractor work at job sites on Mercer Island. This general license is issued annually and grants the business owner the right to conduct business within the City of Mercer Island. The fee for the Business License is \$30.00 per year and must be obtained prior to starting work. A business license application can be obtained by visiting the Finance Department at City Hall, by downloading the application from the City website at

[www.mercergov.org/businesslicenses](http://www.mercergov.org/businesslicenses), or by calling the Business License Division of the Finance Department at (206) 275-7783.

- K. An Asbestos survey must be performed by an AHERA-certified building inspector prior to beginning work on a demolition project. This survey must be posted at the work site. The Puget Sound Clean Air Agency also requires a Notice of Intent to Perform a Demolition be filed before any demolition project may be started. If any asbestos is identified in the work area, it must either be properly abated prior to any work in the area, or not disturbed by the demolition activities. For further information, contact the Puget Sound Clean Air Agency at (206) 689-4058.

*This information is provided as a courtesy and does not imply implicitly or explicitly any duty or responsibility by the City of Mercer Island management or staff to enforce the asbestos abatement regulations. The applicant takes full responsibility for meeting all notification and abatement regulations.*

- L. Contact the Washington State Dept. of Commerce Lead Paint Program at (360) 586-5323, or visit [www.commerce.wa.gov/lead](http://www.commerce.wa.gov/lead), or email the lead program at [lbpinfo@commerce.wa.gov](mailto:lbpinfo@commerce.wa.gov) before renovating or remodeling activities in pre-1978 residential buildings or child occupied facilities to ensure your compliance with applicable Washington lead regulations.

*This information is provided as a courtesy and does not imply implicitly or explicitly any duty or responsibility by the City of Mercer Island management or staff to enforce Washington State lead regulations. The applicant takes full responsibility for meeting all lead regulations.*

## II. NOTIFICATIONS

- A. A pre-construction meeting with the City's Site and Utility Inspector is required prior to beginning work. The meeting may be requested online at [www.mybuildingpermit.com](http://www.mybuildingpermit.com), or call the City's inspection request line at 206.275.7730. Schedule meeting at least 72 hours prior to the desired meeting date.
- B. The Applicant shall schedule inspections online at [www.mybuildingpermit.com](http://www.mybuildingpermit.com), or call the City's inspection request line at 206.275.7730 before 4:00 pm for any requested inspection the follow day.
- C. The Applicant shall notify the Mercer Island Police Department at 425-587-3400 and Mercer Island Fire Department at 206-275-7607 at least 48 hours prior to any street closures or lane closures. Applicant shall notify Police and Fire Departments once all streets are open to all vehicular traffic.
- D. The Applicant shall call "Call Before You Dig" at 1-800-424-5555 at least two (2) business days before commencing any excavation.

## III. CONSTRUCTION PARAMETERS

- A. Maximum allowable hours of work are 7:00 a.m. to 7:00 p.m. Monday through Friday (except holidays) and 9:00 a.m. to 6:00 p.m. Saturday. No work may be performed on Sunday and holidays. Holidays include the following: New Years' Day; Martin Luther King, Jr.'s Birthday; Presidents' Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; Day after Thanksgiving Day; Christmas Day. Refer to MICC 8.24.020Q(2).

- B. All public access roadways are to be restored to the existing condition prior to the project (photos before start of work recommended). All access roads are to remain clean.
- C. The City is to be provided with the name and license numbers (state contractor's and City business license) of the contractor and sub-contractors prior to any inspection (MICC 5.01.040).
- D. Any changes to the approved plans require prior approval by City Staff.
- E. The applicant shall comply with Sound Transit's Construction Community Outreach Plan.

#### **IV. PEDESTRIANS and TRAFFIC**

- A. The applicant shall comply with the traffic control plan attached to this permit.
- B. Lane closures are authorized under this Right-of-Way Use Permit.
- C. All signs, barricades, related equipment, and their use shall be in accordance with Part IV, "Traffic Control Devices for Highway Construction and Maintenance Operations," of the Manual on Uniform Traffic Control Devices (MUTCD), latest edition. All signs and equipment shall be removed from the public right-of-way when not in use. Flasher units shall supplement signs and barricades during the hours of darkness at construction sites near vehicular and pedestrian traffic. All workers and flaggers shall conform to all regulations regarding work during the hours of darkness.
- D. All flaggers must have a valid Washington State Traffic Control / Flagger card and wear proper personal protective equipment (hardhat, reflective vest, gloves and footwear).
- E. Work that impacts traffic flow must be performed Monday – Friday 9:00 am – 3:30 pm, except legal holidays. Additional time restrictions may be added to this permit to mitigate construction impacts on traffic.
- F. Safe pedestrian and vehicle access must be provided around the project site.
- G. Emergency vehicle access shall be maintained at all times.
- H. Provide a minimum 11 foot width lane in each direction at all times unless otherwise reflected in the Traffic Control Plan.
- I. When traffic flow is altered in a signalized intersection and the signal is deactivated, an off-duty police officer must be utilized to direct traffic through the intersection.
- J. In the event construction activities and/or traffic control measures create excessive traffic congestion, corrective measures shall be provided by the contractor when required by the City Engineer.
- K. The Applicant shall minimize disruptions to Metro Transit and Mercer Island School District school buses. Buses shall be given priority access through the work zone.

#### **V. CONSTRUCTION RELATED VEHICLE PARKING**

- A. Construction worker parking shall be established and used in accordance with the Construction Management Plan. The provided parking capacity must be sufficient for all anticipated construction vehicles. If planned parking is not sufficient, the contractor shall find alternative off-site parking locations not on City of Mercer Island streets or right of way and shuttle workers to the site.
- B. The Owner or Contractor shall apprise all subcontractors of these parking requirements upon their arrival on the job site.
- C. Do not stop or park a vehicle in such a position as to block the driveway entrance to any abutting property. Do not use any neighborhood driveway for vehicle turnaround purposes without the prior written permission of the property owner(s).

- D. The City of Mercer Island Fire Department may perform site visits to verify emergency vehicle access is maintained.
- E. Additional parking restrictions may be required if it is determined that construction parking adversely impacts normal neighborhood activities or on projects extending beyond a one-year duration.

## **VI. EROSION CONTROL**

- A. Erosion control and Tree Protection are your first inspections.
- B. All tree protection fencing needs to be in place at drip-lines or beyond before any work begins on the construction site.
- C. Properly install sediment and erosion control measures as noted on the approved site plans (MICC 19.07.010). All sediment and erosion control features must be installed and inspected prior to the start of any land-disturbing activity. No construction activity shall be inspected prior to an approved erosion control inspection. All erosion and sediment control features must be maintained for the duration of the project and are subject to inspection at any time. All "land disturbing activity" is subject to provisions of MICC 15.09.
  - 1) Protect adjacent properties from any increased runoff or sedimentation due to the construction project using appropriate "best management practices" (BMP). Examples include, but are not limited to, sediment traps, sediment ponds, filter fabric fences, vegetative buffer strips, or bioengineered swales.
  - 2) Prevent sediment, construction debris, paints, solvents, etc. or other types of pollution from entering public storm drains. Contain all pollution on your site.
  - 3) All exposed soils shall remain denuded for no longer than two (2) days from October 1st to April 30th and not longer than seven (7) days from May 1st to September 30th. All soils shall be stabilized with mulch, hay, a plastic covering, or other appropriate ground cover. All exposed soils shall be covered immediately during any rain event.
- D. You are responsible for controlling all silt laden runoff and are responsible for any costs incurred in any required cleanup. You shall respond immediately in the event of any level of damage to adjacent properties, which is a result of your project.
- E. Silt fence: clean and provide regular maintenance of the silt fence. The fence is to remain vertical and function properly throughout the term of the project.
- F. See the approved site plan/erosion control plan for additional specific requirements.

## **VII. CONSTRUCTION and RESTORATION**

- A. Verify locations and depths of existing utilities prior to any excavation. Call "One Call" at 1-800-424-5555 at least 48 hours prior to construction.
- B. Streets, shoulders, and sidewalks must be kept clean at all times. Any spilled material or debris shall be removed as soon as possible by hand or mechanical sweeping. The applicant shall not employ scraping type equipment or activity to clean pavement surfaces.
- C. All areas in the vicinity of the proposed work, including but not limited to; public right-of-way, private roadways, easements, walkways/trails, landscaping and permanent pavement markings shall be restored to the existing condition or better prior to the project.
- D. Applicant will be responsible for any damage to underground/overhead utilities from their construction activities.



- E. All open cuts on existing paved streets shall be "neat saw-cut" prior to restoring pavement.
- F. When steel plates are used to cover an excavation; each side of the plate shall have a minimum of 12-inches bearing on the sides of the cut and shall be anchored by steel pins as directed by the City Engineer. Steel plates shall be bedded on MC 250 cold mix and shimmed to prevent movement. On arterial streets, polymer-modified cold asphalt (EZ Street or equal) shall be used in lieu of cold mix. The bedding shall be tapered on all sides to provide a smooth transition for all users. Steel plates shall be textured to provide a non-skid surface in dry and wet conditions as acceptable to the City Engineer. All steel plates shall be highlighted with paint at the edges and an advance warning sign shall be installed to identify the presence of the steel plate.
- G. Steel plates shall not be used to cover an excavation for more than 72 hours. After that time, permanent Class B hot mix asphalt or polymer-modified cold asphalt (EZ Street or equal) shall be placed unless otherwise approved by the City Engineer.
- H. Final asphalt restoration must be completed within 30 days of excavation unless an extension has been granted in advance. The limits of pavement restoration in the public right of way shall be determined by the City Engineer prior to final inspection of the project.
- I. Class B hot mix asphalt or polymer-modified cold asphalt (EZ Street or equal) shall be used for temporary asphalt patches. MC250 cold mix is not allowed. Temporary asphalt patches shall be marked "TEMP" in white paint. Permanent pavement restoration shall be completed within 30 calendar days.
- J. Installation of private concrete driveways, trees, shrubs, irrigation, boulders, berms, walls, rockeries, gates, and other improvements are not allowed in the public right-of-way without a prior approved and recorded Encroachment Agreement and Right-of-Way Use Permit from the Senior Development Engineer.

#### **VIII. CIVIL ENGINEERING/UTILITY REQUIREMENTS**

- A. All staging and storage shall occur on site.
- B. Do not backfill with native material in public right of way. All material must be imported 5/8" minus, crushed rock.
- C. The existing water services for 7714 North Mercer Way and 2297 78<sup>th</sup> Ave SE must be abandoned at the city water main. The owner of the project is responsible for all cost associated with the abandonment of the existing water service.
- D. The existing side sewer services for 7714 North Mercer Way and 2297 78<sup>th</sup> Ave. SE must be abandoned at the property limits. The owner of the project is responsible for all cost associated with the abandonment of the existing side sewer services.
- E. The existing side sewer service for 2291-78<sup>th</sup> Ave. SE must be maintained at all times.
- F. The existing city fire hydrant A3-22 must be abandoned at the city water main. The construction of the new fire hydrant shown on the approved plan must meet the current City Standard.
- G. The use of ADS flexible pipe is not allowed for permanent improvements.
- H. Sand Collars are required for grouting PVC pipe to concrete structures. This also applies to ADS N-12 pipes and HDPE pipes.
- I. Owner shall control discharge of surface drainage runoff from existing and new impervious areas in a responsible manner. Construction of new gutters and downspouts, dry wells, level spreaders or downstream conveyance pipe may be necessary to minimize drainage impact to adjacent

properties. Construction of minimum drainage improvements shown or called out on the plan does not imply relief from civil liability for offsite drainage impacts.

- J. The contractor must pot hole all utilities prior to making connections to verify material, diameter, alignment, condition, etc. Prior to making connections, contractor shall have all necessary parts, materials and equipment on site. Contact Site & Utilities inspector to verify.
- K. Install and maintain catch basin filter/socks in all storm drain catch basins/inlets downslope and within 500 feet of the construction area. Catch basin filters should be designed by the manufacturer for use at construction sites and approved by the city inspector. Catch basin filters should be inspected frequently, especially after storm events. If the filter becomes clogged, it should be cleaned or replaced.
- L. TV inspection of existing side sewers is required all the way to the City sewer main when being reused. If the TV inspection fails as determined by the City of Mercer Island Inspector, replacement of the existing side sewer is required.
- M. Newly installed side sewers require a 4 psi air test or provide 10 foot hydrostatic head test.
- N. The contractor must pot hole prior to any grading activities less than 6" over public mains (water, sewer and storm systems). If there is a conflict, the applicant shall submit a revision for approval prior to any grading activities over the mains.
- O. The lawn and landscape areas are required to provide Post-Construction Soil Quality and Depth in accordance with BMP T5.13. The project civil engineer must provide a letter of certification to ensure that the lawn and landscape areas are meeting the Post-Construction Soil Quality and Depth Requirements specified on the approved plan set prior to final inspection of the project.
- P. Full-size, survey grade as-built drawings are required for all water, sewer, and stormwater system modifications/improvements; illumination; landscaping/irrigation; and signage. The as-built drawings shall be in electronic format (PDF) files and based on Mercer Island's datum and tied to at least two City monuments. As-built drawings must be approved by the Development Engineer.
- Q. The owner is required to perform the video inspection of all new drainage system constructed as a part of the permit. The owner is required to submit inspection results (digital files and reports) to the city prior to final inspection of the project. If there are any deficiencies of the newly constructed drainage system. The owner is required to remediate the deficiencies to the satisfaction of the City Engineer.
- R. The owner is required to perform the video inspection for the downstream of the existing city drainage system to ensure the damages and construction debris left in the city drainage system. The limits of the inspection will be determined by the City Engineer. The owner is required to submit inspection results (digital files and reports) to the city prior to the final inspection of the project. If there are any damages or construction debris in the system. The owner is required to repair the damages and clean the system to the satisfaction of the City Engineer.
- S. Where vaults, handholes, and other utility access points are installed in paved sidewalks or path areas, the lids shall include a non-slip surface similar to "Slip-NOT" or equivalent finish approved by the City Engineer.
- T. Fire hydrants shall not be used as a source of water for construction projects without prior approval from the Mercer Island Public Works Department. See the Finance Department to pay a deposit for a double check valve assembly and meter.

- U. The contractor shall not use water from new water services until a water meter has been installed. The water meter shall be installed as soon as possible after construction of the water service.

#### **VIV. BUILDING/STRUCTURAL REQUIREMENTS**

- A. Special Inspections and Geotechnical Inspections Required. See plan sheet E07-SWN002 for required special inspections and geotechnical inspections.
- B. Deferred Submittal items. Plans, calculations, and associated information for any deferred submittal items shall be submitted to the city for review, comment and/or approval prior to construction. Please provide at least 4-weeks for this process.

#### **X. PLANNING/ZONING REQUIREMENTS**

- A. Additional rockeries, gravel or concrete paths, patio or similar hardscape require a formal revision to be submitted to the City to review for code conformance.
- B. All Japanese knotweed (*Polygonum cuspidatum*) and Regulated Class A, Regulated Class B, and Regulated Class C weeds identified on the King County Noxious Weed list, as amended, shall be removed from the property.

#### **XI. TREE REQUIREMENTS**

- A. All tree protection fencing shall be installed before any work begins, including demolition and grading. Fencing must be maintained for the duration of the project and is subject to inspection at any time. Temporary removal of fencing requires prior approval by the city arborist.
  - 1) Tree protection fencing must be installed at the drip line of trees to be saved or as otherwise noted on the plans.
  - 2) A warning sign shall be prominently displayed on each fence at 20' intervals describing the tree protection zone.
  - 3) Do not remove tree protection fencing without authorization from the city arborist
  - 4) No driving or parking of equipment within drip lines.
  - 5) No storage of construction supplies, materials, or debris within drip line
  - 6) Steel plates or plywood and 8" of woodchips or hog fuel required to cover roots within drip line if work is approved within drip line.
  - 7) No grading is allowed within drip line including during the landscaping phase unless authorized in advance by the city arborist.
  - 8) Removal of existing vegetation within drip line shall only occur in conjunction with final landscape installation.
  - 9) Violation may require assessment of tree(s) by qualified arborist with TRAQ certification and installation of mitigation measures recommended by the arborist.
- B. Trees located in right of way are the City's and must be protected at all times with tree protection fencing at a minimum. Temporary removal of fencing is not allowed without prior approval by the city arborist. Damage to or unauthorized removal of trees will result in civil penalty and remediation in accordance with MICC 19.10.160.
- C. Designated tree(s) may be cut if:

- Roots are undisturbed and retained for slope stability.
  - Other designated vegetation is not disturbed within protected drip lines or slopes.
  - Exceptional Trees on adjacent property are protected.
  - Tree protection fencing is installed and inspected prior to any work including demolition.
  - Comply with Mercer Island Tree Protection Fencing and Tree Replanting details.
  - City right of way trees are protected throughout project.
  - For border trees, written permission from neighbor is obtained prior to removal.
  - 6 inch depth (minimum) of wood chips are placed by hand in saved tree driplines near any proposed construction activity.
  - Replacement trees are planted at least 10 feet from buildings, each other, and existing trees.
- E. Change to the original scope of work on the approved plans requires prior approval by the city arborist.
- F. Slopes exceeding 30% are subject to the October 1 – April 1 Seasonal Development Limitations described in MICC 19.10.110. No tree cutting may occur during this period unless a hazard exists.
- G. Hazard Tree Assessments are the responsibility of the owner when applicable.
- H. When tree protection is not maintained during construction and there is evidence of damage to or removal of a protected tree, a fine equal to up to three times the value of the tree plus the cost of remediation (MICC 19.10.160) may be assessed.
- I. All dry utilities (power, gas, CATV, phone, internet, etc.) must be placed outside saved/protected tree driplines. This includes underground power lines.
- J. All new fence installations shall be installed by hand tools within saved trees driplines. And all roots over 2" shall be avoided by spanning or other means. Fence structure to be at least 12" away from tree trunks and 6" from roots over 2".
- K. Other site-specific permit conditions:
- When authorized by the city arborist, the contractor may excavate within the dripline of a tree. However, a qualified arborist (Certified Tree Risk Assessor TRAQ) must be on site during all construction activities and shall provide a written inspection report documenting their observations during construction. All large exposed roots must be evaluated in writing by the qualified arborist. Large roots are considered any roots at least two inches in diameter encountered within five times the trunk diameter (DSH) of the tree. This is to ensure that the tree(s) will not be destabilized by severing the root(s) in question.
  - Due to the large number of tree removals and replacements required, a Tree Replacement / Landscaping Plan is required.
  - Additional Comments:

Trees 689 and 688 to be salvaged and returned to the city for replanting. See note 20 on plans.

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**XII. FIRE REQUIREMENTS****Inspection Scheduling:**

- A. Most residential sprinkler, fire alarm and final fire inspections require a **three-day notice**. Please schedule online at <https://inspection.mybuildingpermit.com/> or by calling the Fire Inspection Request Line at (206) 275-7979. You will be contacted by the Fire Marshal's office to confirm inspection availability.

**Conditions:**

*The checked items below are conditions of permit approval for this project. These conditions contain information that must to be provided to the various contractors, for example: information regarding the fire and water service for the plumbing contractor, fire alarm requirements for the electrical contractor, sprinkler coverage and design requirements for the fire sprinkler contractor, etc.*

- Address identification shall be plainly visible from the street fronting the property. These numbers shall be a minimum of 6 inches high with a minimum stroke width of 0.5 inch on a contrasting background. Where access is by means of a private road and the building address cannot be viewed from the street, directional signage with an indicating address shall be provided as necessary to identify the building location. For example, all forks or turn-offs of an access road leading to the final driveway shall be marked. The driveway shall be marked with the house address numerals as shall the home or building facing the entrance drive (IFC 505).
- Fire and Rescue pathways around buildings shall be provided as follows:
  - a) A clear path around the house shall be maintained for fire and rescue access.
  - b) A minimum four-foot-wide space around the exterior shall be maintained.
  - c) Grass, pavement or gravel is acceptable.
  - d) Fenced areas shall have gates provided at each end of the house if applicable.

- Fire Safety During Construction shall consist of:
- a) Approved fire extinguishers shall be placed throughout each floor level and clearly marked so that no travel distance shall exceed 50 feet. Fire extinguishers shall have a minimum rating of 2A10B:C and shall be tagged by a certified extinguisher company as currently serviced
  - b) Flammable liquids are not allowed to be used for cleaning. Flammable liquids shall be kept in approved cabinets. Motorized equipment shall not be refueled inside the building.
  - c) Spraying (using lacquers and flammables) is specifically prohibited inside the structure. The spraying of flammable finishes shall be accomplished in an IFC approved spray booth and the finished wood transported to the site for assembly. The contractor may use flammable lacquer finish that is applied by brush.
  - d) Other flammables (contact cement, glues, paints, solvents, etc.) shall be used in a well-ventilated area with no smoking signs erected and sources of potential ignition eliminated.
  - e) No Smoking signs shall be posted and maintained throughout the structure (especially where flammable finishes will be applied).
  - f) Welding, cutting, brazing and other hot work shall be done with extreme care and a fire watch shall be maintained for at least 30 minutes after the hot work is completed. Fire extinguishing equipment shall be readily available while all hot work is underway.
  - g) All temporary stairs and ramps into the structure shall be capable of supporting required loads and provided with a graspable handrail at the open side.

### XIII. DENIAL OF CURB CUT CONSTRUCTION, CONVEYANCE OF ROW, and O&M AGREEMENT

#### A. New North Mercer Way bus bay

ROW permit application number 2010-186 proposes construction and use of a new curb cut on the north side of North Mercer Way with signage providing "No Parking (Bus only)." See e.g. Plan Sheets E07-CRP002, E07-CMP002, and E07-CMS002. Sound Transit has informed the City by letter from attorney Patrick Schneider dated October 20, 2020 that Sound Transit intends to "use this area as a bus bay for layovers and supplemental passenger drop-offs."

The use of the City's ROW as a bus bay for layovers and passenger drop-off purposes are not uses authorized under a ROW permit in the Mercer Island City Code (MICC). Ch. 19.09. MICC. These uses are also prohibited by the terms of the 2017 Settlement Agreement Between the City of Mercer Island and The Central Puget Sound Regional Transit Authority (Sound Transit) for the East Link Project ("2017 Agreement").

Permission to construct the curb cut is denied for the reasons stated above.

#### B. Conveyance of real property as ROW

ROW permit application number 2010-186 includes use of real property that is not City ROW. Specifically, King Count tax parcel numbers 5315101-838 and 5315101-837 (the "Tax Lots") located north of North Mercer Way ROW are included in the ROW permit application for construction of portions of the roundabout, sidewalk, retaining wall, storm drainage vault and other improvements (the "Improvements"). See e.g. Plan Sheets E07-CRP001, E07-CDP001, E07-UCP001, E07-CMP001, E07-CLP001, E07-SWP001, E07-LHP001, and E07-LPP001. Real property must be City ROW to be included in a ROW permit. MICC 19.06.060.

ROW permit application number 2010-186 is therefore conditioned on the following:

- 1) Prior to any activity for construction of the Improvements on the Tax Lots, Sound Transit shall obtain the City’s acceptance of a conveyance by deed of the Tax Lots as City ROW.
- 2) Approved work in the existing City ROW may proceed prior to conveyance by deed of the Tax Lots if Sound Transit is able to show convenient, continual, safe vehicle and pedestrian access through the construction zone and obtain written approval of said access from the City Engineer.
- 3) Work approved on 80th Avenue SE is not affected by this condition.

**C. Operations and Maintenance Agreement**

Pursuant to the 2017 Agreement, Sound Transit is solely responsible for all costs required to construct, implement, and operate the systems and facilities authorized under ROW permit number 2010-186. Prior to final inspection and acceptance by the City of the work and improvements authorized by ROW permit number 2020-186, Sound Transit shall obtain the City’s agreement to an Operations and Maintenance Agreement wherein Sound Transit agrees to reimburse the City for the future costs incurred for maintenance, repair and replacement of these systems and facilities. Upon final inspection and acceptance, Sound Transit must also provide the City with a Bill of Sale for the roundabout related infrastructure.

**XIV. ADDITIONAL REQUIREMENTS, MISCELLANEOUS ITEMS, and APPEALS**

- A. All equipment and vehicles used for this job shall have a readable company name in public view.
- B. All contractors and sub-contractors shall have a valid City of Mercer Island Business License.
- C. This Right-of-Way Use Permit may be modified or revoked at any time if safety issues or persistent and valid complaints regarding this project arise.
- D. Dispute Resolution 2017 Settlement Agreement. Disputes regarding the meaning of the 2017 Settlement Agreement must be resolved in accordance with the procedures laid out in the document.
- E. Appeal of ROW Permit issues. Pursuant to section 19.15.030, Table A and Table B, if Sound Transit believes the City has incorrectly applied the MICC, the administrative appeal of a right of way permit is to the City’s Hearing Examiner.

By signing this, I acknowledge that I have read all of the above conditions and will follow them to the best of my abilities. If I have any questions on these conditions or any other part of the permit documents I will call and get clarifications prior to performing any work:

Owner/Representative \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_

