

**INTERLOCAL AGREEMENT BETWEEN KITSAP TRANSIT AND THE PORT OF BREMERTON CONCERNING INSTALLATION OF PASSENGER-ONLY FERRY OPERATIONS FLOAT AND SERVICE FLOAT IN BREMERTON**

WHEREAS, the Port of Bremerton ("Port") intends, by early 2008, to finish a long planned expansion to the Bremerton marina which is adjacent to the Bremerton ferry terminal; and

WHEREAS, Kitsap Transit ("Transit") has formulated the plans to initiate passenger-only ferry ("POF") service from the Bremerton ferry terminal at some future point which will require adding an Operations Float (A-Float) and a Service Float (B-Pontoon) at the ferry terminal; and

WHEREAS, Transit desires to preserve the ability to use the expanded dock whenever POF Service is viable; and

WHEREAS, the planned Transit POF A-Float/B-Pontoon have long been planned by both parties to provide critical southern protection to the expanded Bremerton marina from vessel wakes and wind driven waves when installed, and

WHEREAS, Transit now indicates that it will not be able to fund the A-Float/B-Pontoon project until sometime after the time that the Port expects to install and start operation of its marina expansion; and

WHEREAS, Transit plans to fund their project from a variety of local and non-local sources some of which the timing of receipt is now unpredictable, and

WHEREAS, the Port has access to interim funding to support the permitting, design and construction of A-Float and B-Pontoon until such time as Transit's funding is secure and enables repayment to the Port, and

WHEREAS, Transit and the Port have concluded that it is in the best interest of both parties, and for the cost-effective and timely execution of two major projects that serve the constituencies of both organizations, to combine efforts to obtain permits, design, and construct the POF operations and service floats; and

WHEREAS, the parties agree that the joint management of the permitting, design, and construction of the A-float and B-Pontoon project is in the best interest of public environmental and financial responsibilities, and

WHEREAS, the Port and Transit have entered into a previous Interlocal Agreement which addressed each agency's responsibilities for the permitting and design of the floats, and which deferred agreements on construction details to a future agreement, and

WHEREAS, the Port and Transit have collaborated on the design of the A-Float and B-Pontoon facility with the Port paying for all design costs, and

WHEREAS, the Port has awarded a contract to construct the A-Float and B-Pontoon facility and intends to construct this facility using Port funds, and

WHEREAS, the Port and Transit agree that Transit will reimburse the Port for all design and construction costs related to the installation of the A-Float and B-Pontoon prior to Transit conducting any long term commercial or revenue operations involving the use of A-Float or B-Pontoon. This is assumed to mean until Transit secures a funding source adequate for full day ferry operations, and

WHEREAS, Transit and Port are authorized to enter into Interlocal Agreements (ILA) pursuant to RCW 39.34.

NOW THEREFORE, the parties agree as follows:

1. Previous Interlocal Agreement Superseded. This ILA supersedes the ILA with the same title dated August 8, 2006. The August 8, 2006 ILA is cancelled in its entirety.

2. Construction. The Port and Transit agree to the following conditions related to the construction and installation of the A-Float and B-Pontoon facility (the project):

- a. Transit will provide to the Port the A-Float in its entirety at its current location (Commencement Bay near Crow's Nest Marina, Tacoma, WA) for use in this project. The Port will assume all responsibility for the A-Float from Transit, including establishing appropriate liability and property loss insurance, when the A-Float is disconnected from its moorings in preparation for towing to Bremerton for use in the project.
- b. Transit will provide to the Port, without charge, the following steel pipe piles that are currently stored on the deck of the A-Float for use in the project:
  - i. One 24" Dia x 1" wall 122' long ASTM 253 Gr. 3 pipe pile DevGuard 238 coated with drive shoe
  - ii. One 36" Dia x 1.25" wall 93' long ASTM 253 Gr. 3 pipe pile DevGuard 238 coated with drive shoe
  - iii. One 36" Dia x 1" wall 93' long ASTM 253 Gr. 3 pipe pile DevGuard 238 coated with drive shoe
  - iv. One 36" Dia x 1" wall 98' long ASTM 253 Gr. 3 pipe pile DevGuard 238 coated with drive shoe
- c. Transit hereby authorizes the Port to place the A-Float, B-Pontoon and associated piling and fendering within the Washington State Department of Natural Resources aquatic lease number 22-079545.

- d. The Port will administer and oversee all aspects of the construction including the bid and award process, and will act as the construction project manager. Transit will continue to collaborate with the Port during construction in a manner similar to the collaboration during design.
- e. The Port will provide the B-Pontoon, which is currently moored at Bremerton, WA, and the Port will fund the project.

3. Lease of A-Float: Transit agrees to lease the A-Float to the Port for the sum of \$1.00 effective at the time the Port takes control of the A-Float as described in paragraph 2.a above. The term of the lease will continue until Transit reimburses the Port as provided in paragraph 5. The A-Float may be used by Transit for non-commercial public transportation purposes in accordance with the Federal Transit Administration requirements including testing wake wash and economic assumptions.

4. Post-Construction Maintenance and Operation. Upon completion of the construction and installation the Port will assume all responsibilities for the maintenance and operation of the A-Float/B-pontoon complex until such time that Transit reimburses the Port for the design and construction and Transit assumes control of the A-Float/B-Pontoon complex. The Port and Transit agree to pool maintenance resources on waterfront maintenance and repair efforts when such action will lower the cost or otherwise benefit the public.

5. Reimbursement for Design and Construction Costs. Prior to Transit conducting any operations involving the use of A-Float and/or B-Pontoon there shall be executed an agreement between Transit and the Port covering reimbursement to the Port of all expenses associated with the design and construction of the A-Float/B-Pontoon project. The amount of reimbursement will be based on the actual cost of design and construction in 2007 dollars inflated annually at the US Bureau of Labor Statistics Seattle-Tacoma-Bremerton CPI-U rate.

6. Mutual Indemnity. Each party agree to indemnify, defend, and hold harmless the other party and its officers, employees and agents from any and all losses, expenses, costs, obligations, liens, claims, demands, or causes of action for death, personal injury or property damage, including reasonable attorneys' fees and costs that arise out of the negligence or willful misconduct of the indemnifying party.

7. Term. The term of this Agreement shall be ongoing unless terminated by the mutual written agreement of both parties.

8. Effective Date. This Agreement is effective when signed by both parties.

9. Complete Agreement. This Agreement and its attachments contain the entire understanding among the parties, and there are no other agreements, understandings or representations except as set forth or incorporated by reference herein. Any

amendment to this Agreement must be in writing signed by the authorized representatives of each party.

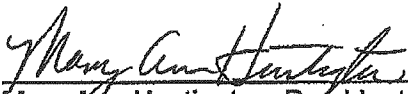
10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.


11. Authority to Enter Agreement. Each of the signatories hereto hereby represent and warrant that he it has the right, power, legal capacity and authority to execute this Agreement and to bind the entity that each represents to this Agreement and the obligations hereunder.

12. Venue and Choice of Law. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this agreement or any provision thereof shall be instituted only in the courts of the State of Washington, County of Kitsap. It is mutually understood and agreed that this agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance.

IN WITNESS WHEREOF, this agreement is signed by the parties this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**PORT OF BREMERTON**

  
\_\_\_\_\_  
Mary Ann Huntington, President

  
\_\_\_\_\_  
Cheryl Kincer, Secretary

  
\_\_\_\_\_  
Wm H. Mahan, Commissioner

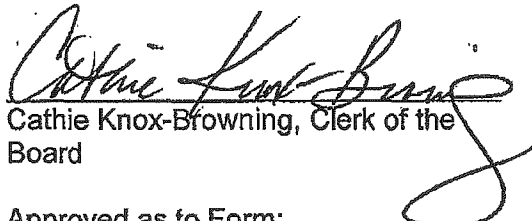
Approved as to Form:

  
\_\_\_\_\_  
Port Attorney


**KITSAP TRANSIT**

 12/13/07  
\_\_\_\_\_  
Richard M. Hayes, Executive Director

ATTEST:

  
\_\_\_\_\_  
Cathie Knox-Browning, Clerk of the Board

Approved as to Form:

  
\_\_\_\_\_  
Transit Attorney