

8850 SW State Highway 3  
Bremerton WA 98312

www.portofbremerton.org  
tel (360) 674-2381  
fax (360) 674-2807

*Commissioners*  
Larry Stokes  
Roger Zabinski  
Axel Strakeljahn

*Chief Executive Officer*  
Tim Thomson

*Bremerton National Airport*  
(360) 674-2381

*Olympic View Business &  
Industrial Park*  
(360) 674-2381

*Port Orchard Marina*  
(360) 876-5535

*Bremerton Marina*  
(360) 373-1035

# TRANSMITTAL

**To:** John Clauson, Executive Director  
Kitsap Transit  
60 Washington Ave, Ste 200  
Bremerton, WA 98337

**From:** Steve Slaton, Port Director of Marine Facilities *SS*

**Date:** July 25, 2012

**Subject:** Agreement between Kitsap Transit and the Port of Bremerton

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## Enclosed:

- 1 For your records: Fully-executed original of the A Float – B Pontoon Reimbursement, Maintenance and Use Agreement between Kitsap Transit and the Port of Bremerton dated July 19, 2012 and signed by the Port Commission on July 24, 2012.

cc: Port CFO

**A FLOAT - B PONTOON REIMBURSEMENT, MAINTENANCE  
AND USE AGREEMENT BETWEEN  
KITSAP TRANSIT AND THE PORT OF BREMERTON**

This Agreement is made and entered into by and between the PORT OF BREMERTON, a Washington Municipal Corporation (the "Port") and KITSAP TRANSIT, a Washington Municipal Corporation ("KT") effective as of the 17<sup>th</sup> day of July, 2012.

**SECTION ONE**  
**Recitals And Purpose**

- 1.1 On August 8, 2006, the Port and KT executed an Interlocal Agreement (hereafter the "First ILA") for the design and construction of a facility (hereafter the "Facility") which has sometimes been referred to as the *A-Float and B-Pontoon Project*. The principal purposes of completing the Facility was to (i) provide a breakwater for the protection and benefit of the Port's Harborside Marina; (ii) to provide an Operations Float and Service Pontoon adjacent to the Bremerton Transfer Center to enable KT to undertake cross-sound passenger-only ferry service between Bremerton and Seattle (collectively, the "Principal Uses"). In addition, both parties contemplated incidental uses of the Facility by both Parties would be permitted to the extent such uses ("Incidental Uses") do not impair, impede or undermine the preceding Principal Uses. Hereafter, the preceding Principal Uses and Incidental Uses shall sometimes be referred to as "Permissible Uses".
- 1.2 The First ILA was replaced by a replacement Interlocal Agreement dated December 13, 2007 (hereafter, the "Second ILA").
- 1.3 As provided by the Second ILA, KT provided the A-Float and the Port provided the B-Pontoon and advanced all costs for the design and construction of the Facility (including the cost of incorporating the A-Float and B-Pontoon into the Facility).
- 1.4 Funding for KT's acquisition of the A-Float was provided by the Federal Transit Administration ("FTA") and any disposition of the A-Float other than for the above Permissible Uses are subject to the approval and/or applicable regulations of, the FTA (the "FTA Restrictions").
- 1.5 Following the completion of the Facility in August 2008, the Port and KT executed a Memorandum of Agreement (the "MOA") dated April 22, 2009, which memorialized and

itemized the reimbursable design and construction costs (the "Reimbursable Costs") advanced by the Port.

- 1.6 The purpose of this Agreement is to provide for a reimbursement schedule for KT's reimbursement of the Reimbursable Costs due the Port and to provide for the use, operation and maintenance of the Facility.
- 1.7 This Agreement supersedes and fully replaces all prior agreements and understandings regarding the Facility including the First and Second ILAs and the MOA.

## **SECTION TWO**

### **Substantive Terms**

- 2.1 **Incorporation Of Recitals.** The recitals set forth in Section One are incorporated herein.
- 2.2 **KT's Reimbursement Obligation.** The Port and KT agree that as of January 1, 2012, KT's reimbursement obligation to the Port totaled \$2,999,905.26 (the "Obligation"). It is mutually agreed that the Obligation shall be repaid without interest as follows:
  - 2.2.1 *Initial Reimbursement Term.* Subject to Section 2.2.2, KT shall pay the Port the principal sum of \$2,999,905.26 without interest as follows: KT shall pay 29 annual installment payments of \$100,000.00 each beginning on March 1, 2013 and continuing on the same day and month of each succeeding year through March 1, 2041 with a final 30<sup>th</sup> payment in the amount of \$99,905.26 due on March 1, 2042.
  - 2.2.2 *Accelerated Repayment Term.* If and when KT secures long-term operational funding for the initiation and undertaking of regular cross-sound passenger-only ferry service between Seattle and Bremerton, the unpaid balance of the Obligation shall be paid in full within four years (hereafter the "Maturity Date"), of the date such ferry service commenced. During this four year period, until the Obligation is repaid in full, KT shall pay the unpaid balance in four equal annual installments due on March 1 of each respective calendar year with a final payment due on the Maturity Date.
  - 2.2.3 *Reversionary Terms.* If for any reason regular scheduled cross-sound passenger-only ferry service is not initiated, or having been initiated, is canceled, the 30 year repayment plan set forth in Section 2.2.1 shall resume (over the remainder of the initial 30 year term) until (i) the unpaid balance is fully paid; or (ii) regular cross-

sound passenger-only ferry service is reinstated, in which case the then unpaid balance shall be paid over a new Accelerated Repayment Term in accordance with the provisions of Section 2.2.2.

2.2.4 *Other Payments.* KT may pre-pay the unpaid Obligation in whole or part at any time without penalty.

2.3 **Permitted Incidental Uses And Improvements.** The Port and KT may use the Facility for the Permitted Uses as defined in Section 1.1. Neither Party shall make other uses without the express written consent of the other Party. The Port agrees that the following uses of and improvements to the Facility by KT are permitted Incidental Uses and shall not trigger the commencement of the Accelerated Repayment Term under Section 2.2.2:

2.3.1 *Vessel Re-Fueling.* KT may re-fender the Facility and add fueling fixtures and equipment (collectively "Fueling Improvements") and use the Facility to refuel its Vessels used in connection with KT's local foot ferry service between Annapolis, Port Orchard and Bremerton and the RP 1.

2.3.2 *POF Testing.* KT may use the Facility to undertake and complete the environmental and operational testing currently planned for the *RP 1* vessel. It is projected that such testing will continue for a period not to exceed 8 months.

2.3.3 *Incidental Back-Up Use.* Occasional moorage and landing of KT's foot ferry service Vessels when the regular foot ferry service dock adjacent to the Bremerton Transfer Center is unavailable.

2.4 **Maintenance and Insurance.**

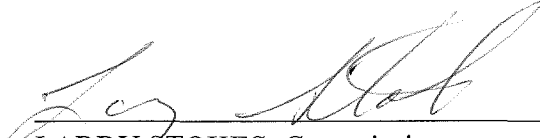
2.4.1 *General Maintenance:* The Port shall be responsible for the maintenance of the anchoring of the Facility; specifically, pilings and pile capture components. KT shall be responsible for the maintenance of the floats and any improvements or modifications they may make to the Facility.

2.4.2 *Insurance.* Each party will assume responsibility of property and liability loss insurance for their respective asset effective as of the date that both parties have signed the Agreement. KT is responsible for property and liability loss insurance for A-Float and the Port is responsible for property and liability loss insurance for B-Pontoon.

- 2.5 **Term.** This Agreement shall continue until terminated by both parties. Subject to the FTA Restrictions, if mutually terminated, KT may not remove A-Float without the written permission of the Port.
- 2.6 **Mutual Indemnity.** Each party agrees to indemnify, defend, and hold harmless the other party and their commissioners, 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 attorney's fees and costs that arise out of the negligence or willful misconduct of the indemnifying party.
- 2.7 **Effective Date.** This Agreement is effective when signed by both parties.
- 2.8 **Complete Agreement.** This Agreement contains the entire understanding between the Parties, and there are no other agreements, understandings or representations except as set forth herein. Any amendment to this Agreement must be in writing signed by the authorized representatives of each party.
- 2.9 **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.
- 2.10 **Authority To Enter Agreement.** Each of the signatories hereto hereby represents and warrants that he or she has the right, power, legal capacity and authority to execute into this Agreement and to bind the entity he or she represents to this Agreement and the obligations hereunder.
- 2.11 **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.
- 2.12 **Recording.** Following execution of this Agreement, KT shall record a duplicate original hereof with the Kitsap County Auditor and provide the Port with a copy thereof.

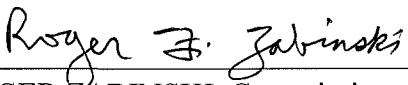
IN WITNESS WHEREOF, this Agreement is signed by the Parties this 19<sup>th</sup> day of July, 2012.

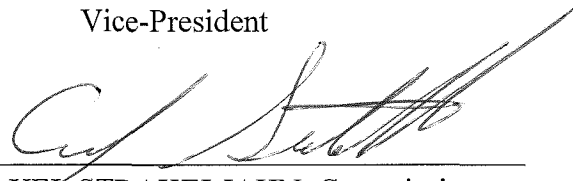
**PORT OF BREMERTON**

  
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LARRY STOKES, Commissioner  
President

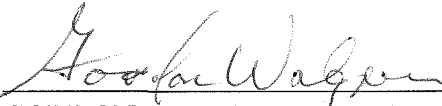
**KITSAP TRANSIT**

  
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JOHN CLAUSON, Executive Director

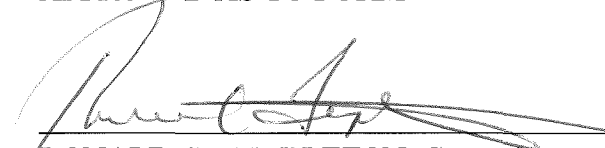
  
\_\_\_\_\_  
ROGER ZABINSKI, Commissioner  
Vice-President

  
\_\_\_\_\_  
AXEL STRAKELJAHN, Commissioner  
Secretary

APPROVED AS TO FORM

  
\_\_\_\_\_  
GORDON WALGREN, Port Attorney

APPROVED AS TO FORM

  
\_\_\_\_\_  
RONALD C. TEMPLETON, General  
Counsel, Kitsap Transit