

**INTERLOCAL AGREEMENT BETWEEN KITSAP COUNTY  
TRANSPORTATION BENEFIT AREA AUTHORITY AND  
PORT OF BREMERTON FOR THE CONSTRUCTION OF  
THE PORT ORCHARD MARINA BREAKWATER  
REPLACEMENT.**

This agreement is between Kitsap County Transportation Benefit Area Authority, whose principal office are located at 60 Washington Ave. #200, Bremerton, WA 98337, (hereinafter referred to as Kitsap Transit) and the Port of Bremerton, whose principal offices are located at 8850 SW Highway 3, Bremerton, WA 98312 (hereinafter referred to as the Port).

**RECITALS**

**WHEREAS**, the Port of Bremerton owns and operates the Port Orchard Marina which has a 49-year-old breakwater which has reached its effective physical and operational lifespan and is in need of replacement; and

**WHEREAS**, the Port of Bremerton intends to construct a replacement breakwater to protect the Port Orchard Marina; and

**WHEREAS**, Kitsap Transit regularly has moored multiple passenger-only ferry vessels and desires to utilize the Port Orchard Marina breakwater for continued passenger-only ferry vessel moorage; and

**WHEREAS**, based on the wake impact study conducted by Port of Bremerton it is beneficial for Kitsap Transit to mitigate the wake impacts at the Port Orchard Marina; and

**WHEREAS**, the Parties have identified that the Port Orchard Marina Breakwater Replacement to be essential public maritime infrastructure, providing critical moorage and vessel wake and wave protection to the Port Orchard Marina when installed, and

**WHEREAS**, the Port has identified design elements of the Port Orchard Marina Breakwater Replacement that facilitate Passenger Only Ferry moorage and provide mitigation of Passenger Only ferry wake impacts; and

**WHEREAS**, Kitsap Transit seeks to participate in opportunities to reduce and mitigate passenger-only ferry vessel wake impacts to the Port Orchard Marina; and

**WHEREAS**, the Port plans to fund the Port Orchard Marina breakwater project from a variety of local, State, Federal, and nonlocal funding sources some of which the timing of receipt is now unpredictable, and

**WHEREAS**, the Port and Kitsap Transit agree that Kitsap Transit will reimburse the Port for the portion of design and construction costs related to the inclusion of breakwater design elements directly related to the Passenger Only Ferry moorage and Passenger Only Ferry wake and wave mitigation, and

**WHEREAS**, the Port and Kitsap Transit agree that Kitsap Transit will, in addition, pay the going rate to the Port for future Passenger Only ferry moorage on the East Breakwater, when completed no later than six years from the start date ("start date" defined as the date of breaking ground) of the project; and

**WHEREAS**, Port and Kitsap Transit are desirous of entering into an agreement to provide a means for one party to assist the other with regards to the breakwater construction, both parties being authorized to enter into Interlocal Agreements (ILA) pursuant to RCW 39.34;

**NOW, THEREFORE**, in consideration of the mutual benefits, covenants, conditions, performances, and promises hereinafter contained, the parties agree to as follows:

**SECTION 1. PURPOSE AND OBJECTIVES.** The Parties agree that the purpose of this Interlocal Agreement is to establish a mutual sharing of costs regarding portions of the replacement of the Port Orchard Breakwater. It is the objective of the Parties to cooperatively work together to facilitate the design, permitting, and construction of the replacement breakwater facility.

**SECTION 2. COSTS AND FUNDING.**

2.1 It is estimated that the upgrades to the identified design elements of the Port Orchard Marina Breakwater Replacement that facilitate Passenger Only Ferry moorage, provide ability for shore power recharge of electric vessels, and provide mitigation of passenger only ferry wake impacts will have a total cost of \$ 588,383.

P.I. Type Breakwater Wake Mitigation:	\$ 250,000
Increased Guide Pile Foundation Strength:	\$ 300,000
Electrical Charging Adaptors to Kitsap Transit Vessels	\$ 15,000
<u>Kitsap Transit portion of Shore power upgrade:</u>	<u>\$ 23,383</u>
Total Cost to mitigate for Transit Ferries:	\$ 588,383

2.2. Calculation of Contribution by Kitsap Transit: Moorage on the Port Orchard Breakwater for multiple Kitsap Transit vessels, shall be at reduced moorage rates, which for multiple vessels equals an estimated annual value of \$ 9,886 per year with the additional of a Seattle-Bellevue CPI increase each year of a minimum of 3.5%. For 25 years, the total moorage amount equals \$385,058.00. The new breakwater project has a projected lifespan of 50 years.

2.3 Kitsap Transit agrees to contribute nine hundred seventy three thousand four hundred forty one dollars (\$973,441.00) to be used exclusively for the Port Orchard Marina Breakwater replacement construction project ("Transit Funds"). The Transit Funds shall be utilized as follows: To pay for the actual costs of the upgrades identified in Paragraph 2.1 shall be the primary use. Secondary use is the prepayment of moorage per Section 2.2 and 2.4. Kitsap Transit shall have the right to audit the Port's books and records related to its use of the Transit Funds for the period from the commencement of this Agreement to six years from its termination.

2.4 Kitsap Transit shall transfer the Transit Funds to the Port in one lump sum by January 30, 2026,



with a right of refund (see Paragraph 2.5 below) if the breakwater improvements/upgrades do not occur. Once work commences, the Port will provide Transit, upon the request of Transit, with quarterly statements outlining the monies spent from the Transit funds. Upon completion of the upgrades, a final accounting would be provided to Transit on funds remaining for the secondary use. Future moorage statements would indicate the annual reduction of Kitsap Transit's remaining moorage credit. Kitsap Transit shall not be responsible for and the Transit Funds shall not be used for (1) any costs overruns for the project costs identified in Paragraph 2.1, (2) any change orders affecting the project costs identified in Paragraph 2.1, and (3) for any other costs or expenses associated with the breakwater project except as otherwise provided for in this Agreement.

2.5. In the event the Port does not complete construction of the Port Orchard Marina Breakwater project within ten (10) years from the date of this Agreement, the Port shall refund to Kitsap Transit the Transit Funds.

**SECTION 3. TERM.** This Agreement shall commence on the date of execution by all parties and shall terminate 25 years from the date of successful Port Orchard Marina Breakwater Replacement construction completion, or whenever the funds per Section 2.2 above are expended, whichever event occurs first.

#### **SECTION 4. FINANCIAL AND LEGAL RESPONSIBILITY**

It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this agreement. Any action at lawsuit in equity of judicial proceeding pertaining to this agreement or any portion thereof, shall be instituted and maintained only in the court of competent jurisdiction at Port Orchard, in Kitsap County, Washington.

**SECTION 5. LEAD AGENCY** The Port will act as lead agency for this Port Orchard Marina Breakwater Replacement project, and will be solely responsible for designing, bidding, and administering the construction contract, including signature authority for all contractual matters. Kitsap Transit's role is limited to providing project funding and it shall have no obligation nor shall there be any requirement it review or approve any project plans, specifications, drawings or the work performed.

#### **SECTION 6. NOTICES**

Whenever notice is required pursuant to this agreement, it shall be given to the respective representatives of the parties at the following addresses:

Kitsap Transit  
Executive Director  
60 Washington Ave. #200  
Bremerton, WA 98337

Port of Bremerton  
CEO  
8850 SW Highway 3  
Bremerton, WA 98312

**SECTION 7. MODIFICATIONS AND AMENDMENTS.** This agreement may be changed, modified, or amended only by written agreement executed by the Parties.

#### **SECTION 8. INSURANCE AND INDEMNITY:**

**8.1 Insurance.** Kitsap Transit shall secure and maintain protection and indemnity insurance for property damage and bodily injury caused by Kitsap Transit vessels mooring at the Premises in an amount of not less than \$5,000,000 per occurrence. Proceeds from such insurance shall be



used to restore damage to the Premises caused by Kitsap Transit vessels. Kitsap Transit shall provide the Port with a certificate of insurance, naming the Port as an additional insured (CG 2010 [form B]) or its equivalent. Except as provided for in Section 8.2 below, Kitsap Transit agrees to hold the Port, its officers, employees, and agents harmless from any liability and/or suits for such injuries or property damage as any person might receive or believe he has received from the acts or omissions of the Kitsap Transit, its agents, or employees, or any other person(s) using the Premises under the terms of this agreement while operating at the Port of Bremerton, including the expense of litigation. No occupancy or use permitted under the terms of this agreement shall commence until such evidence of insurance is presented to and approved by the Port. Kitsap Transit agrees to assume full responsibility for the conduct of all persons involved in the said use of the Premises.

**8.2 Indemnification.** Except as set forth above in Section 8.1, each party hereto agrees to be responsible and assumes liability for its own negligent acts or omissions, and those of its officers, agents, and employees to the fullest extent required by law, and agrees to save, indemnify, defend, and hold the other party harmless from any such liability. In the case of negligence of multiple parties, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other party in proportion to the percentage of negligence attributable to the other party. This indemnification clause shall also apply to any and all causes of action arising out of the performance of work activities under this Agreement. For the purposes of this indemnification, the parties specifically and expressly waive any immunity granted under the Washington Industrial Insurance Act, Title 51 RCW. This waiver has been mutually negotiated and agreed to by the parties. The provision of this section shall survive the expiration or termination of the Agreement. The Port shall specifically indemnify, defend and hold Kitsap Transit harmless from any and all claims arising out of the design, construction, maintenance, and operation of the Port Orchard Breakwater, including without limitation any hazardous waste released or discovery during the construction period or subsequent operation of the Port Orchard Breakwater facility.

**8.3 No Third Party Beneficiaries.** It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party.

**SECTION 9. NON-DISCRIMINATION.** No Party shall discriminate against any person by reason of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, physical disability, or the use of a trained dog guide or service animal by a person with a disability in connection with the performance of its obligation under this agreement.

**SECTION 10. DISPUTE RESOLUTION.** If a dispute arises out of or relating to this agreement or the breach of this agreement and if the dispute cannot be settled through direct discussions between the Parties, the Parties agree to first endeavor to settle the dispute in an amicable manner through discussions between the CEO of the Port of Bremerton, the Executive Director of Kitsap Transit. If a resolution is still not agreed upon, the parties may submit to litigation in Kitsap County Superior Court, and the prevailing party shall recover its costs and attorney's fees incurred, including for appeals, which shall be determined and fixed by the court as part of the judgment.

**SECTION 11. SEVERABILITY.** If any provision of this agreement shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be



severable.

**SECTION 12. ENTIRE AGREEMENT.** This agreement sets forth in full the entire agreement of the parties, and any other verbal or written agreements, representations or understandings are hereby deemed to be null and void and of no force and effect whatsoever.

**SECTION 13. TIMELINESS OF PERFORMANCE.** The parties shall satisfy their responsibilities, obligations, and liabilities under this consent agreement within time limits required by this agreement, and parties acknowledge that time is of the essence.

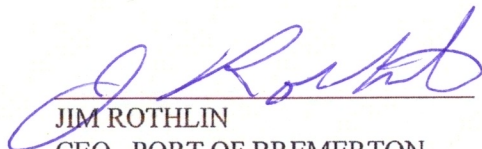
**SECTION 14. SUCCESSORS.** This agreement and all the terms and provisions of it shall be binding on and shall inure to the benefit of the Parties and their legal representatives, and successors, except as otherwise expressly provided for in this agreement.

**SECTION 15. FILING.** This Interlocal Agreement shall be filed with the county auditor following execution by all parties.

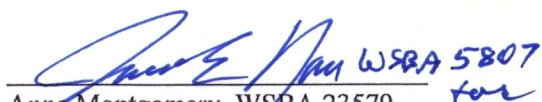
**IN WITNESS WHEREOF,** the parties hereto have executed this agreement as of the day and year first written below.

Date: January 24, 2020

By:  
PORT OF BREMERTON

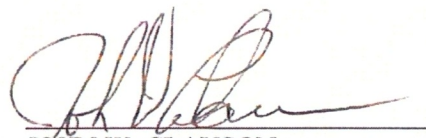
  
JIM ROTHLIN  
CEO, PORT OF BREMERTON

Approved as to Form:

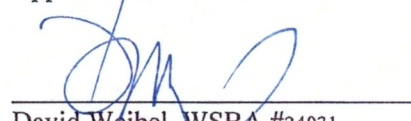
  
Anne Montgomery, WSBA 23579  
Attorney for the Port of Bremerton

Date: January 20, 2020

By: KITSAP TRANSIT

  
JOHN W. CLAUSON  
EXECUTIVE DIRECTOR  
KITSAP TRANSIT

Approved as to Form:

  
David Weibel, WSBA #24031  
Attorney for Kitsap Transit