

**PORT OF BREMERTON**  
**BOARD OF COMMISSIONERS**  
**REGULAR BUSINESS MEETING**

**A G E N D A**

October 14, 2025  
10:00 AM

Bill Mahan Conference Room  
Port Administration Offices  
Bremerton Nat'l Airport Terminal Bldg  
8850 SW State Hwy 3, Bremerton

The Port of Bremerton Board of Commissioners regular business meetings are open to the public and are conducted using a hybrid format. The public is invited to view and/or participate in the hybrid meeting by attending in person or through one of the following options:

- To stream online only (via BKAT feed, with no interaction possible):  
<https://bremerton.vod.castus.tv/vod/?live=ch1&nav=live>
- To join the online Zoom meeting: <https://us02web.zoom.us/j/3359030010>
- For audio only; dial 1.253.215.8782; Meeting ID: 335 903 0010

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**Call to Order**

**Pledge of Allegiance**

**Approval of Agenda**

**Consent Items**

All matters listed under Consent Items have been distributed to each member of the Commission for reading and study, are considered to be routine, and will be enacted by one motion of the Commission with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Items and placed under Action Items by request.

- A. Minutes of the regular business meeting of September 23, 2025.
- B. Payment of checks #903014 through #903019 and #903020 through #903021 and #903022 through #903025 and #87118 through #87129 and #E02894 through #E02899 and #903026 through #903029 and #903030 through #903031 and #87130 through #87147 and #E02900 through #E02913 and #903032 and #903033 through #903034 and #903035 through #903036 and #87148 through #87153 and #E02914 through #E02924 and #903037 and #903038 through #903041 and #903042 through #903051 from the General Fund for \$522,548.04.

**Information Items**

- 1. Dominion Tug Update – Washington State Department of Ecology Liaison
- 2. Sunny Jack Events Report – Sunny Saunders, Founder

**Public Comment**

*Open to the public for comment. Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit further comments in writing to the Clerk of the Board (gingerw@portofbremerton.org)*

**Action Items**

1. Bid Award to Randal Ponce dba PECC for the Bremerton National Airport (BNA) Maintenance Shop & Vehicle Wash Oil-Water Separator Project.
2. Resolution 2025-06 Declaring an Emergency under RCW 39.04.280.

**Staff Reports**

**Commission Reports / New Business**

**Executive Session** *(if necessary)*

**Adjournment**

*Regular business and other meetings that may be attended by members of the Board*

| <u><i>Date</i></u> | <u><i>Time</i></u> | <u><i>Meeting</i></u>   |
|--------------------|--------------------|---|
| 10/14              | 10:00 am           | *Commission Regular Business Meeting - Hybrid                   |
| 10/16              | 12:00 pm           | Kitsap Regional Coordination Council (KRCC) Executive Committee |
| 10/16              | 3:00 pm            | KRCC TransPOL   |
| 10/23              | 10:00 am           | Puget Sound Regional Council (PSRC) Executive Board             |
| 10/28              | 10:00 am           | *Commission Regular Business Meeting – Hybrid                   |

*Meetings are subject to change or cancellation*

*\*Denotes events in which two (2) or more Commissioners may attend*

**PORT OF BREMERTON**  
**BOARD OF COMMISSIONERS**  
**REGULAR BUSINESS MEETING**

**M I N U T E S**

September 23, 2025  
10:00AM

Bill Mahan Conference Room  
Port Administration Offices  
Bremerton Nat'l Airport Terminal Bldg  
8850 SW State Hwy 3, Bremerton  
Remote Option via Zoom

**Commissioners and Staff Present**

Commissioners  
Cary Bozeman  
Axel Strakeljahn

Staff Members  
Jim Rothlin  
Aaron Schielke  
James Goodman  
Kathy Garcia  
Ginger Waye  
Stephanie Frame  
Anne Montgomery, Atty

**Call to Order**

Vice-President Bozeman called the meeting to order at 10:00 a.m. and led the Pledge of Allegiance.

**Approval of Agenda**

**It was moved by STRAKELJAHN, seconded by BOZEMAN to:**

Approve the Agenda as presented.

**MOTION CARRIES, 2-0**

**Consent Items**

- A. Minutes of the regular business meeting of September 9, 2025.
- B. Payment of checks #902986 through #902987 and #902995 and #902996 and #902988 and #902989 and #87070 through #87093 and #E02855 through #E02869 and #902997 through #903000 and #903001 through #903004 and #903005 through #903011 and #87094 through #87117 and #E02870 through #E02891 and #E02892 and #E02893 and #903012 through #903013 from the General Fund for \$729,014.19. VOID Checks 85081, 85261, 85263, 85800, 85890, 86890.
- C. Excuse Commissioner Anderson's absence due to personal travel.

**It was moved by STRAKELJAHN, seconded by BOZEMAN to:**

Approve the Consent Items as presented.

**MOTION CARRIES, 2-0**

## Information Items

1. Port Orchard Waterfront Alliance (POWA) Update – Sarah Butler and Shelby Nelson, Board Members

Ms. Butler provided background on POWA, previously known as Port Orchard Bay Street Association (POBSA), and detailed current POWA and community events they are working on in support of local businesses. She also described their membership, outlining their activities and emphasizing that the group is composed entirely of volunteers. Ms. Nelson provided more details on who makes up the organization. It was noted that the Port's Marketing & Communications Manager, Erica Filler, is a POWA board member. There was discussion regarding the transition from POBSA to POWA.

After additional questions and comments were addressed, Commissioner Bozeman suggested the implementation of a hanging basket program similar to the one in Bremerton. Ms. Butler expressed strong support for the idea but noted that she has encountered challenges in establishing a similar program in Port Orchard. Commissioner Bozeman agreed to meet with Ms. Butler to develop a strategic approach.

**Citizen Comments** - None

**Action Items** - None

## Staff Reports

*Jim Rothlin, Chief Executive Officer, reported on:*

- Cole Barnes, Airport Manager, being honored with a Certificate of Appreciation from the Western Washington Incident Management Team for his support in accommodating the team's helibase needs during the Bear Gulch firefighting efforts.
- Bremerton Night Market's final Friday of the season on October 3.
- Summer Port Report published last Friday with a forward from Commissioner Strakeljahn.
- His visit to Port of South Whidbey as a member of the Washington Public Ports Association (WPPA) Executive Committee.

## Commission Reports / New Business

*Commissioner Strakeljahn will be attending:*

- Puget Sound Regional Council (PSRC) Executive Board meeting.
- SeaTac airport multi-stakeholder airfield tour.

*Commissioner Bozeman reported on:*

- Recent Olympic College Healthcare Expansion Steering Committee meeting.

- Meeting with Wes Larson and others on the prospective project for a new community campus on the preferred site of the old East High School.

**Executive Session** - None

### **Adjournment**

There being no further business before the Board, the meeting was adjourned at 10:32 a.m.

Submitted,

Approved,

Jim Rothlin  
Chief Executive Officer  
October 9, 2025

Axel Strakeljahn  
Commission Secretary  
October 14, 2025

Draft

## **PORT OF BREMERTON**

### **AGENDA SUMMARY**

Agenda Item No:    Action Item #1

Subject:             Airport Maintenance Shop & Vehicle Wash Oil-Water Separator

Exhibits:            Small Works Contract with Randal Ponce dba PECC

Prepared By:        Cole Barnes, Airport Manager

Meeting Date:        October 14, 2025

#### **Summary:**

On September 9, 2025, the Port Commission authorized the call for bids for the construction and installation of the oil-water separator at the Bremerton National Airport maintenance shop and vehicle wash.

The purpose of the installation is to adhere to National Pollutant Discharge Elimination System (NPDES) Permit requirements for regular petroleum storage and transfer operations, vehicle and equipment washing. The project will replace the current sump system with a new coalescing plate oil-water separator.

On October 1, 2025, Port staff received six (6) responsive bids:

| <u>Bidder Name</u>             | <u>Price</u> |
|--------------------------------|--------------|
| Randal Ponce dba PECC          | \$60,061.44  |
| Nordland Construction NW Inc   | \$72,618.00  |
| Titan Mechanical Inc           | \$75,675.60  |
| Pape And Sons Construction Inc | \$77,777.70  |
| Van Ness Construction          | \$81,509.79  |
| Northwest Cascade Inc          | \$104,141.34 |

#### **Cost:**

|                                   |                    |
|-----------------------------------|--------------------|
| Bid- dba PECC                     | \$60,041.44        |
| <u>Engineering – Century West</u> | <u>\$35,449.30</u> |
| Total Cost                        | \$95,490.74        |

#### **Fiscal Impact:**

|   |                    |
|---|--------------------|
| 2025 Capital Budget Airport/OVIP OWS Shop                   | \$90,000.00        |
| <u>2025 Capital Site, Utility and Building Improvements</u> | <u>\$ 5,490.74</u> |
| Total Fiscal Impact   | \$95,490.74        |

Strategic Purpose:

This action conforms with the Port's strategic plan in Goal 7. Continue to improve the Port's environmental performance and minimize its ecological footprint.

Recommendation:

Staff recommend awarding the project to Randal Ponce dba PECC and authorizing the CEO to execute a contract with Randal Ponce dba PECC for the Bremerton National Airport Maintenance Shop & Vehicle Wash Oil-Water Separator.

Motion for Consideration:

**Award bid and authorize the CEO to execute a contract with Randal Ponce dba PECC for the Bremerton National Airport Maintenance Shop & Vehicle Wash Oil-Water Separator.**

**PORT OF BREMERTON  
SMALL WORKS CONTRACT**

**Project: Small Works #JDC-25-0011: BREMERTON NATIONAL AIRPORT  
MAINTENANCE SHOP & VEHICLE WASH OIL-WATER**

**THIS CONTRACT WAS NEGOTIATED TO FAIRLY ALLOCATE  
RESPONSIBILITIES, RISKS, AND EXPENSES ARISING OUT OF THE  
PERFORMANCE OF THIS WORK. THIS CONTRACT IS MADE AND  
ENTERED INTO BY AND BETWEEN THE PORT OF BREMERTON AND  
CONTRACTOR NOTED BELOW FOR THE WORK NOTED BELOW.**

This **SMALL WORKS CONTRACT** (the "Contract") is made and entered as of the date of the last signature herein, between the **PORT OF BREMERTON** (the "Port") and Randal Ponce DBA PECC (the "Contractor") for the construction of the Project described below. The Port and Contractor are collectively referred to hereinafter as the "Parties" and individually as a "Party."

**CONTRACTOR:**

|   |  |
|---|--|
| Contractor's Name:                            | Randal Ponce DBA PECC                          |
| Contractor's Authorized Representative:       | Randal Ponce                                   |
| Contact E-mail:                               | ponceexcavation@gmail.com                      |
| Contractor's Address:                         | 27420 Garden Gate Ave NE<br>Kingston, WA 98346 |
| Telephone Number:                             | 360-297-0773                                   |
| Facsimile Number:                             |  |
| Washington Contractor<br>Registration Number: | PECC***822JL                                   |
| Washington UBI Number:                        | 604-264-513                                    |
| Federal Identification Number:                | 83-3274374                                     |

For and in consideration of the Contract Sum noted below, subject to the terms and conditions contained herein, the Attachments hereto, and the documents referenced herein, Contractor agrees to perform the following work (the "Work") in a timely and workmanlike manner, including supplying all necessary supervision, materials, equipment, supplies, and skilled and sufficient workforce, and to fully, completely, and faithfully comply with all the terms and conditions of this Contract. Contractor will insure that each subcontract shall incorporate this Contract and be

subject to its terms and conditions. The term "Contract Documents" as used herein includes this Contract and the complete set of Bid Documents for the Project.

1. **PROJECT.** Contractor shall do all Work and furnish all tools, materials, and equipment for the Port's public works project known as **Small Works #JDC-25-0011: BREMERTON NATIONAL AIRPORT MAINTENANCE SHOP & VEHICLE WASH OIL-WATER** (the "Project") in accordance with and as more fully described in **Attachment A**.

2. **WORK.** Contractor agrees to perform the Work to construct the Project according to the plans and specifications identified herein and as more fully described in **Attachment A**.

3. **CONTRACT SUM.** The Port shall pay Contractor Fifty-Four Thousand Nine-Hundred Three Dollars and Zero Cents (\$54,983.00), plus applicable Washington State sales tax of Five-Thousand Fifty-Eight Dollars and Forty-Four Cents (\$5,5058.44), for a total of Sixty Thousand Forty-One Dollars and Forty-Four Cents (\$60,041.44) (the "Contract Sum"). The Contract Sum includes all costs associated with the Project, including, but not limited to, labor, materials, overhead, administrative, and permit and regulatory costs, unless otherwise agreed to by the Parties in writing.

4. **PAYMENT TERMS.** The Contract Sum shall be payable in the following manner: On or before the fifth (5<sup>th</sup>) day of each month after Work has commenced, Contractor shall submit a detailed monthly pay request, in a form reasonably acceptable to the Port, for all Work performed during the preceding month as per this Contract (an "Invoice"). The requested payment shall be in an amount proportionate to the Work completed as reasonably determined by the Port, and shall include sufficient documentation, as required by the Port. Five (5) days prior to submitting such Invoice, Contractor shall review a draft of the Invoice and Release and Certificate of Payment ("Release") in detail with the Port and incorporate the Port's comments into the final Invoice submitted to the Port. Contractor shall submit a Release and Certificate of Payment to the Port with each pay request, calculated in accordance with progress against the Work and/or Schedule of Values. The Release shall be submitted in the form provided herein and shall constitute a representation by Contractor to the Port that, to the best of Contractor's knowledge, information, and belief, (i) the Work has progressed to the point indicated; (ii) the quality of the Work covered by the application is in accordance with the Contract Documents; and (iii) Contractor is entitled to payment in the amount requested. As a prerequisite for any payment, Contractor shall provide, on the Port's forms, partial lien releases, claim waivers, and affidavits of payment for the completed portion of Contractor's Work for itself, its subcontractors and suppliers of any tier, and from all third parties, including, but not limited to, union trust funds to which Contractor is required to pay fringe benefits or other contributions for work to be performed on the Project for the completed portions of the Work. The Port shall pay the pay request within thirty (30) days after approval of the pay request, pursuant to the terms below:

a. In the case of a dispute as to the amount owed, the Port will pay only the undisputed amount until the dispute is resolved. Contractor will not be relieved of performance herein in the case of a partial payment based upon a dispute and shall proceed with all Work until completed.

b. In cases of a single payment, the Port shall make payment only after all appropriate Releases are submitted and the retention period has expired.

c. In cases of multiple payments, the Port shall retain monies as required by RCW 60.28 and pay the retainage as provided therein.

d. Before final payment, Contractor shall furnish to the Port the following and/or the Port shall have received the following:

i. An affidavit or lien waiver, in a form acceptable to the Port, that payroll, bills for materials and equipment, and other indebtedness connected with the Work for which the Port, the Port's property, or the retention might be responsible or encumbered (less amounts withheld by Port) have been paid or otherwise satisfied;

ii. State Department of Labor & Industries - "Affidavit of Wages Paid on Public Works Contract" for Contractor and each subcontractor and/or supplier of any tier (RCW 39.12.040);

iii. If applicable, State Department of Labor and Industries - "Letter releasing the Port from Industrial Insurance Contribution Liability" (RCW 51.12.050);

iv. If applicable, State Employment Security Department - "Certificate of Payment Contributions, Penalties and Interest on Public Works Contracts" (RCW 50.24.130);

v. If applicable, State Department of Revenue "Certificate of Payment" letter pursuant to Chapter 60.28 RCW;

vi. "As-Built" drawings showing red-ink deviations and changes from the Construction Drawings;

vii. A complete set of maintenance and operation manuals for equipment items installed; and

viii. Any other close-out documents reasonably requested by the Port or required by law.

5. **CHANGE ORDERS.** A change order ("Change Order") is a written order signed by the Port's Authorized Representative and Contractor's Authorized Representative, and issued after execution of this Contract, authorizing a change in the Work, adjustment in the Contract Sum, or adjustment in the Contract Time, as defined in Section 6. The Contract Sum and Contract Time may be changed only by written Change Order.

**ONLY THE PORT'S AUTHORIZED REPRESENTATIVE MAY PROVIDE CHANGE-ORDER DIRECTION. NO ORAL INSTRUCTIONS AUTHORIZING A CHANGE IN THE WORK, ADJUSTMENT IN THE CONTRACT SUM, OR ADJUSTMENT IN THE CONTRACT TIME SHALL BE VALID OR BINDING ON THE PORT. CONTRACTOR MUST OBTAIN A WRITTEN CHANGE ORDER PRIOR TO PROCEEDING WITH ANY CHANGE IN THE WORK. IF CONTRACTOR FAILS TO OBTAIN A WRITTEN CHANGE ORDER SIGNED BY THE PORT'S AUTHORIZED REPRESENTATIVE PRIOR TO COMMENCING A CHANGE IN THE WORK, CONTRACTOR WAIVES ANY AND ALL RIGHT TO AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT SUM RELATED TO SUCH CHANGED WORK.**

5.1. Contractor acknowledges that, unless expressly stated otherwise within a written Change Order, any change in the Contract Sum and/or Contract Time effected through a written Change Order shall constitute full accord and satisfaction for all costs incurred, labor performed, material and equipment furnished, and any delay, acceleration, or loss of efficiency associated with the change in the Work.

5.2. The Port, without invalidating this Contract, may order changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly. Contractor shall perform the Work as altered. Such changes in the Work shall be authorized and undertaken only with a written Change Order signed by the Port's Authorized Representative, and shall be performed under all applicable terms and conditions of this Contract.

5.3. When the Port proposes a Change Order, the cost or credit to the Port resulting from a change in the Work and adjustments in the Contract Time shall be determined in one or more of the following ways:

- a. First, by mutual agreement as to the Contract Time changes and/or mutual agreement of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluations;
- b. By unit prices stated in the Bid Documents or subsequently agreed upon;
- c. By cost to be determined in a manner agreed upon by the Parties and a mutually acceptable fixed or percentage fee; or
- d. Upon completion of the Work, by the method provided below.

5.4. If none of the methods set forth in Section 5.3(a-c) above is agreed upon, Contractor, provided a written order signed by the Port is received, shall promptly proceed with the Work involved. The cost of such Work and any adjustment in the Contract Time shall then be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change. In case of an increase in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit which shall not exceed ten percent (10%). Contractor shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract, cost shall include, without limitation, the following: (i) cost of materials, including sales tax and cost of delivery; (ii) cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by contract or custom; (iii) workers' or workmen's compensation insurance; (iv) bond premiums; (v) rental value of equipment and machinery; (vi) additional costs of supervision and field office personnel directly attributable to the change; and (vii) fees paid to architects, engineers, and other professionals. In the event that the Port directs a change in the Work that deletes or otherwise results in a net decrease in the Work performed by Contractor, payment shall be made in accordance with the terms of this Contract for the actual Work performed. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

5.5. If unit prices are stated in the Bid Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order that application of agreed unit prices to quantities proposed will cause substantial inequity to the Port or Contractor, applicable unit prices shall be equitably adjusted.

5.6. Contractor's overhead and profit shall be deemed to be allocated evenly across all aspects of the Work, and Contractor shall not receive a weighted allocation of profit and overhead for different aspects of the Work.

6. **COMPLETION DEADLINE/LIQUIDATED DAMAGES.** Contractor shall promptly commence the Work upon receipt of a Notice to Proceed from the Port. The Work to be performed under **Attachment A** for the Project must be completed within ten (10) calendar days of the Notice to Proceed (the "Contract Time"). If the Work for the Project is not completed by such date, then, because of the difficulty in computing the actual damages to the Port arising from any delay in completing the Work, it is agreed by the Parties that Contractor shall pay the Port One Hundred Dollars (\$100.00) for each calendar day that the Work remains incomplete after expiration of the specified completion deadline. The Parties agree that such amount represents a reasonable forecast of the actual damages the Port will suffer by failure of Contractor to complete the Work within the agreed upon Contract Time and is not an arbitrary penalty. The execution of this Contract constitutes acknowledgement by Contractor that Contractor has ascertained and agrees that the Port will actually suffer damages in the above amount.

7. **WARRANTY.** Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, and free from defective workmanship and materials. Contractor further warrants that the Work shall be free from defects in workmanship and material, and shall transfer to the Port all written warranties related to the Work performed and equipment installed. Contractor further warrants that the Work will conform to the requirements of the Contract Documents, will be performed in a skillful and workmanlike manner in compliance with all applicable codes, and will be free from defects, except for those inherent in the quality of the Work which the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Port, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor shall fully guarantee all the Work (including labor and materials) for a minimum period of three hundred sixty-five (365) days after the date of substantial completion acceptance by the Port. Any additional or longer warranty periods contained in the Contract, the Project's Technical Specifications, Contract Drawings, or other Contract Documents shall apply. The Port shall promptly notify Contractor of all warranty claims and allow Contractor reasonable access to the Project to correct or repair the Work at no cost to the Port. Contractor's warranty obligations hereunder are in addition to any and all other remedies available to the Port under law and equity.

8. **PREVAILING WAGES.** Contractor shall pay prevailing wages as required by all applicable law and, without limiting the generality of the foregoing, shall comply with Chapters 39.12 and 49.28 RCW. Notice of intent to pay prevailing wages and prevailing wage rates for the Project must be posted for the benefit of workers. At the completion of the Project, Contractor, and its subcontractors and suppliers of any tier, shall submit Affidavits of Wages Paid to the Washington State Department of Labor and Industries ("L&I") for certification. Final payment on the Contract shall be withheld until the Port receives certification from the L&I that prevailing wage requirements have been satisfied. Information on current prevailing wage rates can be obtained at <https://www.lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>.

9. **BOND.** Contractor shall provide a performance and payment bond for the faithful performance and payment of all its obligations under this Contract and in accordance with RCW 39.08 (the "Contractor's Bonds"). The performance bond shall remain in effect to guarantee the repair and replacement of defective equipment, materials, or workmanship, and payment of damages sustained by the Port on account of such defects, discovered within one (1) year after final acceptance by the Port. **THE PORT MAY WITHHOLD PAYMENT TO CONTRACTOR**

**UNTIL SUCH CONTRACTOR'S BOND IS RECEIVED AND/OR TERMINATE THIS CONTRACT IF CONTRACTOR FAILS TO TIMELY PROVIDE THE CONTRACTOR'S BOND.**

In the event the Contract Sum is less than One Hundred Fifty Thousand Dollars (\$150,000.00), and upon written request from Contractor prior to the first (1<sup>st</sup>) payment under this Contract, in lieu of the Contractor's Bonds, the Port may retain ten percent (10%) of the Contract Sum from each payment for a period of thirty (30) days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue, the Employment Security Department, and L&I, and settlement of any liens filed under Chapter 60.28 RCW, whichever is later pursuant to RCW 39.08.010(3).

10. **INDEMNIFICATION.** To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold harmless the Port, and its officers, agents, and employees, from and against claims, damages, losses, and expenses, including, but not limited to, attorneys' fees and costs, consulting fees, expert fees, and expenses, arising out of or resulting from performance of the Work. Contractor's indemnity and defense obligations do not extend to liability resulting from the sole negligence of the Port and their agents. Contractor's duty to indemnify and defend the Port for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the Port, and/or their agents; and (b) Contractor, and/or its agents, employees, and subcontractors and suppliers of any tier, shall apply only to the extent of the negligence of Contractor, and/or its agents, employees, and subcontractors and suppliers of any tier.

This indemnification obligation shall include, but is not limited to, all claims against the Port by an employee or former employee of Contractor or any subcontractor. **FOR PURPOSES OF THE FOREGOING INDEMNIFICATION PROVISION, AND ONLY TO THE EXTENT OF CLAIMS AGAINST CONTRACTOR BY THE PORT UNDER SUCH INDEMNIFICATION PROVISION, CONTRACTOR SPECIFICALLY WAIVES ANY IMMUNITY IT MAY BE GRANTED UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, THE UNITED STATES LONGSHORE AND HARBOR WORKERS COMPENSATION ACT, 33 USC §901-950, OR ANY OTHER SIMILAR WORKERS' COMPENSATION SCHEMES. THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE TO OR FOR ANY THIRD PARTY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. THE FOREGOING PROVISION WAS SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES HERETO.**

11. **INSURANCE.**

11.1 **Insurance Coverages.** Contractor shall obtain, and keep in force during the term of this Contract, insurance policies as set forth below and Contractor will insure that each subcontractor meets the requirements of this Section:

a. Comprehensive General Liability. Commercial General Liability ("CGL") Insurance policy covering all claims for bodily injury (including, without limitation, death); property damage (including, without limitation, all real and personal property located on the Premises or the Port's property), and personal and advertising injury arising from the Premises or the Port's property as a result of or arising out of Contractor's operations under this Lease. The limits of liability shall be not less than Two Million Dollars (\$2,000,000.00) for each occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be twice the required occurrence

limit. The Port may impose changes in the limits of liability (i) on any Periodic Adjustment Date; (ii) as a condition of approval of assignment or sublease of this Contract; (iii) upon any breach of the environmental liability provision herein; (iv) upon a material change in the condition of any Tenant Improvements; or (v) upon a change in the Authorized Use. If the liability limits are changed, Contractor shall obtain new or modified insurance coverage within thirty (30) days after changes in the limits of liability are required by the Port. A lapse in coverage shall be considered a default. The CGL policy shall be written on an occurrence basis with the insurer's duty to defend outside of the limits of the policy, meaning that the defense obligation does not erode the liability limits. Any deductible shall be no greater than Twenty-Five Thousand Dollars (\$25,000.00) and defense costs shall satisfy the deductible. All deductibles are the responsibility of Contractor. In the event the Port pays a deductible, Contractor shall reimburse the Port no later than thirty (30) days after invoice for the same. No self-insured retentions shall be allowed unless approved by the Port in writing. The CGL coverage shall be at least as broad as Insurance Services Office ("ISO") Form CG 00 01. Coverage is to be placed with insurers authorized to conduct business in the State of Washington with a current A.M. Best's rating of no less than A: VII. The CGL policy shall provide coverage for damage to the Port's property caused by Contractor.

b. Worker's Compensation. Worker's Compensation Insurance as required by the State of Washington with statutory limits. Worker's Compensation Insurance is not required if Contractor provides written verification to the Port that it has no employees.

c. Automobile Liability. Automobile Liability Insurance using ISO Form CA 00 01 covering any auto, including non-owned and hired autos, with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage. Automobile liability insurance is not required if Contractor provides written verification to the Port that it does not own, hire, rent, or borrow any autos in conjunction with its use of the Premises. "Auto" carries the same meaning as found in ISO Form CA 00 01.

d. Contractor's Pollution Liability Insurance. If required in **Attachment A**, Contractor shall, prior to commencement of the Work and throughout the entire period of performance by Contractor, procure and maintain Contractor's Pollution Liability Insurance with a limit no less than Two Million Dollars (\$2,000,000.00) per claim or occurrence and Two Million Dollars (\$2,000,000.00) aggregate per policy period of one (1) year, including coverage for transportation, for a minimum amount of One Million Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage, with the Port named as an additional insured. Contractor shall provide the Port evidence satisfactory to the Port of such insurance coverage and additional insurance certificate prior to undertaking any Work. Contractor's insurance coverage shall be primary insurance as respects the Port. Contractor's Pollution Liability Insurance Policy can be issued on either a claims-made or claims-occurrence form. If issued on a claims-made form, the following additional terms apply to Contractor's Pollution Liability Insurance policy: (i) coverage shall be maintained for a minimum of six (6) years after Contract completion, with evidence of the same provided to the Port annually; (ii) the Retroactive Date must be shown and must be before the date of this Contract or commencement of Work hereunder; and (iii) if the policy is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the date of the Contract or commencement of Work hereunder, Contractor must purchase "extended reporting" coverage for a minimum of six (6) years after completion of the Contract Work.

e. Longshoremen and Harbor Worker's Insurance. If required in **Attachment A**, Contractor shall, prior to commencement of the Work and throughout the entire

period of performance by Contractor, procure and maintain United States Longshore and Harbor Workers Insurance ("USL&H"), in a form and with insurers acceptable to the Port.

f. Excess or Umbrella Insurance. If any Excess or Umbrella Insurance policies are used to meet the limits of liability required herein, said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions, and shall meet all of the liability insurance requirements stated herein, as evidenced by a Following Form Endorsement. Such Excess or Umbrella Insurance carrier shall have a duty to defend the Port outside of the policy limits. No insurance policies maintained by the additional insureds, whether primary or excess, shall be called upon to contribute to a loss until Contractor's primary and excess liability policies are exhausted.

**11.2 Insurance Provisions.** The insurance policies required above shall contain, or be endorsed to contain, the following provisions:

a. Additional Insured. The foregoing liability insurance policies shall name the Port as additional insured by way of a policy endorsement at least as broad as ISO Form CG 20 10. The defense and indemnification of the Port as an "additional insured" will not be affected by any act or omission by Contractor which might otherwise result in a forfeiture of said insurance.

b. Primary Coverage. For claims related to or arising from this Lease, Contractor's coverage shall be primary and non-contributory, and at least as broad as ISO CG 20 01 04 13 with respects to the Port, and its elected officials, employees, or agents.

c. Notice of Change or Cancellation. Each required insurance policy shall provide that coverage shall not be materially changed, amended, or canceled with respect to the Port except upon thirty (30) days' prior written notice from the insurance company to the Port.

d. Waiver of Subrogation. Contractor grants the Port, and its elected officials, employees, and agents, a waiver of any right to subrogation which any insurer of Contractor may acquire against the Port by virtue of the payment of any loss under such insurance. Contractor shall obtain any endorsement(s) that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the Port has received such an endorsement from the insurer.

e. Separation of Insureds. The CGL policy shall contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit. The CGL policy shall not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another.

f. Certificates and Policy Documents. Contractor shall provide certificates of insurance, policy declarations, and endorsement pages, and, if requested, copies of any policy, to the Port evidencing insurance compliant with this Section 11. Receipt of such documents by the Port does not constitute approval by the Port of the terms of such policy

**12. JOB SAFETY/HOUSEKEEPING.** Contractor, and its lower-tier subcontractors and suppliers, shall take all reasonably necessary safety precautions pertaining to its Work and its Work performance, including, but not limited to, compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, local, or other, OSHA/WISHA, and any safety measures requested by the Port. Contractor shall at all times be

responsible for providing a safe jobsite and for the Work performance and safety of all employees, personnel, equipment, and materials within Contractor's, or its lower-tier subcontractor or supplier's, care, custody, or control. Contractor and its lower-tier subcontractors and suppliers shall furnish all required safety equipment for its Work and shall ensure all of their employees and lower-tier subcontractors and suppliers' employees have and wear personal protective equipment in compliance with applicable OSHA/WISHA requirements and the Port's safety rules, as provided in writing to Contractor. Contractor shall promptly provide the Port with written notice of any safety hazard(s) or violation(s) found on the jobsite. Contractor agrees to defend, indemnify, and hold the Port harmless from all WISHA and/or OSHA claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Contractor or its subcontractors or suppliers' failure to comply with any safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder. The Port may charge against the sums otherwise owing to Contractor the amount of the fine and/or fees, costs, and expenses incurred by the Port in the defense of the claim's citation and/or fine arising from or related to Contractor's above-referenced failure.

12.1 All Work done shall be done in a manner that minimizes interruptions or inconvenience to the public and/or the Port and/or the Port's tenants. All Work shall be carried on with due regard for the safety of the public, and Contractor shall maintain strict compliance with the appropriate provisions relating to control of traffic and pedestrians through work areas as set forth in the Manual on Uniform Traffic and Control Devices (current edition) as adopted by the Washington State Department of Transportation. Property and streets adjacent to the Project site shall be kept free and clear at all times from accumulations of mud, dirt, gravel, rock, and other matter. Contractor will be responsible for daily and final clean up and disposal of refuse, waste, and debris produced by its operation. Refuse shall not be permitted to accumulate to the extent that it interferes with free access to the Project site. Should the Port determine Contractor is not fulfilling its obligation in this regard, the Port reserves the right to take such action as may be necessary and to charge Contractor with any costs that may be incurred in such remedial action.

13. **COMPLIANCE WITH CODES AND REGULATIONS.** Contractor shall comply with all applicable statutes in performing the Work, including, but not limited to, all federal, state, and local laws, regulations, codes, and standards that are applicable at the time Contractor performs the Work.

14. **PERMITS AND INSPECTIONS.** Unless specified otherwise in the Contract, Contractor shall obtain and pay for all required permits, including the General Building Permit and any associated plan check fees, etc. Contractor is to provide and pay for any required plan development, engineering, etc., required to obtain the needed permits. Contractor shall pay for any and all inspections necessary for execution and completion of the Work.

15. **TAXES AND TEMPORARY FUNCTIONS.** Contractor shall pay any and all federal, state, and municipal taxes, including sales taxes, if any, for which Contractor may be liable in carrying out this Contract. Contractor shall be responsible for all temporary functions associated with its Work, including but not limited to, lighting, wiring, protection, hoisting, scaffolding, rigging, flagmen, drinking water, storage, ventilation, and heat.

16. **TERMINATION.** The Port may, by written notice, terminate this Contract, in whole or in part, at any time, either for the Port's convenience or because of failure to fulfill the Contract obligations. Upon receipt of such notice, Work must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this

Contract, whether completed or in progress, delivered to the Port. If the termination is for the convenience of the Port, payment shall be made in accordance with the terms of this Contract for the actual Work performed through the date of termination, including Contractor's reasonable closeout costs. In no case shall Contractor be paid for anticipated profit on unperformed Work. If the termination is due to Contractor's failure to fulfill its obligations, the Port may take over the Work and prosecute the same to completion. In such case, Contractor is liable to the Port for any additional cost occasioned to the Port thereby.

17. **GENERAL PROVISIONS.** The following general conditions shall apply:

17.1 **Notices.** Any notice or demand desired or required to be given under this Contract shall be in writing and deemed given when personally delivered, sent by facsimile machine, sent by electronic mail, or deposited in the United States Mail (or with an express courier), postage prepaid, sent certified or registered mail, and addressed to the Authorized Representative as set forth above at such address as set forth above. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission, shall be the same as delivery of an original document.

17.2 **Modification.** No modification of this Contract and no waiver of rights under this Contract shall be valid or binding on the Parties unless the same is in writing.

17.3 **Waiver.** No failure by the Port to insist upon the strict performance of any covenant, duty, contract, or condition of this Contract, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, contract, term, or condition. Any waiver by the Port must be expressly made in writing and signed by the Port.

17.4 **Assignment.** Neither Party shall assign, transfer, or otherwise dispose of this Contract, in whole or part, to any individual, firm, or corporation without the prior written consent of the other Party. Subject to the provisions of the preceding sentence, this Contract shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto. This Contract is made only for the benefit of the Port and Contractor, and their successors in interest, and no third party or person shall have any rights hereunder whether by agency or as a third-party beneficiary.

17.5 **Severability.** If any term, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of this Contract shall remain in effect.

17.6 **Dispute Resolution.** If any dispute, controversy, or claim arises out of this Contract, the Parties agree to first try to settle the dispute, controversy, or claim in non-binding mediation with the assistance of a recognized professional mediation service selected by the Port. The Parties shall each designate a representative with full settlement authority who will participate in the mediation. The Parties shall bear all expenses associated with the mediation equally, except for attorneys' fees.

17.7 **Jurisdiction/Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Washington. Any suit to enforce or relating to this Contract shall be brought exclusively in Kitsap County Superior Court, Kitsap County, Washington. The Parties expressly waive their rights to a jury trial.

17.8 **Attorneys' Fees.** In the event that any Party commences litigation against the other Party relating to the performance, enforcement, or breach of this Contract, the substantially prevailing Party in such action shall be entitled to all costs, including attorneys' fees and costs, and any such fees or costs incurred on appeal.

17.9 **Subcontractor Responsibility.** Contractor's standard subcontract form shall include the subcontractor responsibility language required by RCW 39.06.020, and Contractor shall have an established procedure which it utilizes to validate the responsibility of each of its subcontractors. Contractor's subcontract form shall also include a requirement that each of its subcontractors shall have and document a similar procedure to determine whether the sub-tier subcontractors with whom it contracts are also "responsible" subcontractors as defined by RCW 39.06.020.

17.10 **Entire Agreement.** This Contract, and its Attachments hereto, contain the entire understanding between the Port and Contractor relating to the Project which is the subject of this Contract. This Contract merges all prior discussions, negotiations, letters of understanding, or other promises whether oral or in writing. Subsequent modification or amendment of this Contract shall be in writing and signed by the Port and Contractor.

|  |
|--|
| <p><b>THIS CONTRACT CONTAINS INDEMNIFICATIONS FROM CONTRACTOR TO THE PORT, RELEASES BY CONTRACTOR, AND A LIMITED WAIVER OF IMMUNITY UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, OR ANY OTHER SIMILAR WORKERS' COMPENSATION SCHEMES.</b></p> |
|--|

**CONTRACTOR:**

**Randal Ponce DBA PECC**

**PORT:**

**PORT OF BREMERTON**

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Jim Rothlin

Its: CEO

Dated: \_\_\_\_\_

**DECLARATION OF OPTION FOR MANAGEMENT OF  
STATUTORY RETAINED PERCENTAGE**

**Project Name:** \_\_\_\_\_

Five percent (5%) of all payments earned by Contractor under this Contract will be held pursuant to Chapter 60.28 RCW. Contractor is directed to select one of the four (4) following options:

- A. On behalf of \_\_\_\_\_, I hereby elect to have the retained percentage of the Contract held by the Port until sixty (60) days following completion of the Work or until all releases from the appropriate State Agencies have been received.

Date \_\_\_\_\_ Signed \_\_\_\_\_

- B. On behalf of \_\_\_\_\_, I hereby elect to have the Port deposit the retained percentage of the Contract into an interest-bearing account, not subject to withdrawal until sixty (60) days following final acceptance of the Work and all State Agency releases are obtained.

Date \_\_\_\_\_ Signed \_\_\_\_\_

- C. On behalf of \_\_\_\_\_, I hereby elect to have the Port place into escrow for investment the retained percentage of the Contract from time-to-time as such retained percentage accrues until sixty (60) days following final acceptance of the Work and all State Agency releases are obtained.

I hereby designate \_\_\_\_\_ as the repository for the escrow of said funds.

In the event that this Option C is selected, Contractor agrees that it alone shall bear any and all risks associated with the selection and designation of the bonds or securities into which such funds will be invested, and that the Port is not in any way responsible or otherwise liable for the risks associated with the investment. Contractor hereby further agrees to be fully responsible for payment of all costs or fees incurred as a result of placing said retained percentage in escrow and investing it as authorized by statute. The Port shall not be liable in any way for any costs or fees in connection therewith.

Prior to the Port investing any funds in an escrow account, Contractor shall obtain a letter from the repository on the repository's letterhead stating its acceptance of the account, the account number, and a statement that it will not release any funds to any party until authorized in writing by the Port. In the event that such a letter is not delivered to the Port prior to the commencement of the Project Work, then the Contractor shall be deemed to have selected Option A, above.

Date \_\_\_\_\_ Signed \_\_\_\_\_

D. On behalf of \_\_\_\_\_, I hereby elect to submit a retainage bond in the following form provided by the Port.

Date \_\_\_\_\_ Signed \_\_\_\_\_

**RETAINAGE RELEASE BOND**  
**BOND # \_\_\_\_\_**

**KNOW ALL MEN BY THESE PRESENTS:** That whereas the **PORT OF BREMERTON** (the "Port") has awarded to \_\_\_\_\_ (the "Principal"), a Contract for \_\_\_\_\_ (the "Project"), all as hereto attached and made a part hereof, and whereas said Principal has requested under RCW 60.28.011(6) to provide a retainage bond in lieu of the Port holding statutorily required retention on the Project required under the terms of said Contract to furnish a bond for the faithful performance of said Contract.

**NOW, THEREFORE,** we, Principal and \_\_\_\_\_, a corporation organized and existing under and by virtue of the laws of the State of Washington, duly authorized to do business in the State of Washington, as "Surety," are held and firmly bound unto **PORT OF BREMERTON**, a municipal corporation of the State of Washington, in Principal Sum (hereinafter the "Retainage") in an amount equal to five percent (5%) of all monies earned by Principal on estimates during the progress of the Work under the Contract, but in the initial sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States, as a trust fund for the protection and payment of any and all persons entitled to claim against the Retainage under Chapter 60.28 RCW. Principal and Surety agree to be bound by the laws of the State of Washington and subject to the jurisdiction of the State of Washington.

**THE CONDITION OF THIS OBLIGATION ARE AS FOLLOWS:**

- i. Principal and Surety are jointly and severally held and bound unto the Port, and all other beneficiaries of the trust fund created by RCW 60.28.011(1), as Obligees, in a penal sum equal to five percent (5%) of all monies earned by Principal on estimates during the progress of the Work under said Contract (which sum includes and is not limited to increases due to change orders, increases in the quantity of work, and the addition of new items of work), lawful money of the United States of America, for the payment of which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally;
- ii. This Bond, including any proceeds therefrom, is subject to all claims and liens arising out of the Work performed under said Contract, in the same manner and priority as set forth for the Retainage under Chapter 60.28 RCW. Any amount(s) determined by the Port to be due and payable from the Retainage in accordance with the provisions of Chapter 60.28 RCW shall be paid by Surety no later than thirty (30) days from and after Surety's receipt of the Port's written identification of the appropriate payee and amount payable;
- iii. Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this Bond. Surety hereby waives notice of any change, extension of time, alterations, or additions to the terms of the Contract or the Work or to the specifications. Surety agrees to and is bound by the laws and subject to the jurisdiction of the courts of the State of Washington with respect to this Bond. The venue for any action hereunder shall be solely and exclusively in Kitsap County,

Washington; and

- iv. This Bond shall remain in full force and effect until Surety is notified by the Port that (a) all necessary affidavits have been provided by Principal; (b) the Port has received the Washington State Department of Revenue's certification that all taxes, increases, and penalties due and to become due from Principal with respect to such Contract or otherwise have been paid in full or are readily collectible without recourse to the State's lien on this Bond; (c) the Port is satisfied that the claims of materialmen and laborers who have filed claims against such Bond, together with sums sufficient to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees associated therewith, have been paid; (d) any sums due to the Port from Principal have been paid; (e) the Port is satisfied that all other taxes, increases, and penalties due and owing from Contractor have been paid; and (f) the obligation is duly released by the Port.

**PROVIDED, FURTHER**, that no final settlement between the Port and Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

**IN WITNESS WHEREOF**, the said Principal and the said Surety have caused this bond and one (1) counterpart thereof to be signed and sealed by their duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PRINCIPAL**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**SURETY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

Name and Address of Surety's Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**CONTRACT BOND**  
**BOND # \_\_\_\_\_**

**KNOW ALL MEN BY THESE PRESENTS:** That whereas the **PORT OF BREMERTON** has awarded to \_\_\_\_\_, hereinafter designated as the "Principal," a Contract for \_\_\_\_\_, all as hereto attached and made a part hereof, and whereas said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract.

**NOW, THEREFORE,** we, the Principal and \_\_\_\_\_, a corporation, organized and existing under and by virtue of the laws of the State of Washington, duly authorized to do business in the State of Washington, as "Surety," are held and firmly bound unto **PORT OF BREMERTON**, a municipal corporation of the State of Washington, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Principal and Surety agree to be bound by the laws of the State of Washington and subject to the jurisdiction of the State of Washington.

**THE CONDITION OF THIS OBLIGATION IS SUCH** that it shall remain in full force and effect until the above-bonded Principal, his or its heirs, executors, administrators, successors, or assigns:

- i. Shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the said Contract;
- ii. Shall faithfully perform all the provisions of such Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, at the time and in the manner therein specified;
- iii. Shall pay all laborers, mechanics, subcontractors, and materialmen, and all parties who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such Work, on his or their part;
- iv. Shall defend, indemnify, and save harmless the Port, and its officers and agents, as required by said Contract; and
- v. Shall further defend, save harmless, and indemnify the Port, and its officers and agents, from any defect or defects in any of the workmanship or materials furnished by the Principal entering into any part of the Work or designated equipment covered by said Contract, which shall develop or be discovered within one (1) year after the substantial completion acceptance of such Work, at which time this obligation shall become null and void.

Notwithstanding anything else herein, the liability hereunder for defects in materials and workmanship for a period of one (1) year after the substantial completion acceptance of the Work shall not exceed the sum of \_\_\_\_\_ (100% of the Contract sum) Dollars (\$\_\_\_\_\_).

Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this Bond. Surety hereby waives notice of any change, extension of time, alterations, or additions to the terms of the Contract, the Work, or to the specifications; provided, that said changes, extensions, alterations, and additions shall not increase Surety's obligations under this Bond by more than ten percent (10%) of the Contract price without written consent of Surety.

**PROVIDED, FURTHER**, that no final settlement between the Port and Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

**IN WITNESS WHEREOF**, the said Principal and the said Surety have caused this Bond and one (1) counterpart thereof to be signed and sealed by their duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PRINCIPAL**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**SURETY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

Name and Address of Surety's Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

## **Chapter 39.08 RCW Contractors' Bond BOND WAIVER INFORMATION**

(Contracts of less than \$150,000.00)

Chapter 39.08.010 RCW provides that on contracts of One Hundred Fifty Thousand Dollars (\$150,000.00) or less, at the option of Contractor, the respective public entity may in lieu of the bond, retain ten percent (10%) of the Contract amount for a period of thirty (30) days after final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

If Contractor requests this "Bond Waiver" option in lieu of providing a performance bond, the Port will determine whether it is in the Port's best interest to use this form of security. If the Port approves the option, the Port will retain ten percent (10%) of the Contract amount until the following steps have been satisfied:

1. The Project must be complete and the Authorized Representative of the Port must accept the Project as complete, including, without limitation, the Port's acceptance in writing, issuance of an occupancy permit (if applicable), and Final Acceptance of the Project Work by the Port.
2. The Port will hold ten percent (10%) of the Contract amount for thirty (30) days after the Project has been accepted as complete.
3. If there are no liens filed within the thirty (30)-day lien period, the Port will release the retained ten percent (10%) of the Contract amount.
4. If liens are filed within the thirty (30)-day lien period, the Port will release the Contract amount less the total amount of the filed lien, plus an estimated amount to cover the Port's attorneys' fees to resolve the liens up to a total of five percent (5%) of the original Contract amount. The retained funds shall be held by the Port until the Port is properly notified that the lien or liens have been satisfied and/or directions are received from the court as to the disposition of the retainage.

**It is the responsibility of each bidder to review this "Bond Waiver Information", and the Port will not be held responsible for misinterpretation of same.**

## RELEASE AND CERTIFICATE OF PAYMENT

1. Date: \_\_\_\_\_
2. Contractor: \_\_\_\_\_
  - a. Name: \_\_\_\_\_
  - b. Address: \_\_\_\_\_
  - c. Telephone: \_\_\_\_\_
3. Project:
  - a. Name: \_\_\_\_\_
4. Payment Amount: \_\_\_\_\_
5. Period Covered: \_\_\_\_\_
6. \_\_\_\_\_ Progress Payment—Partial Release.  
\_\_\_\_\_ Final Payment — Full Release.

Contractor covenants and warrants to:

Port of Bremerton  
8850 WA-3  
Bremerton, WA 98312

("The Port" or "Port"), and certifies as follows:

1. All persons, firms, corporations, and other entities furnishing labor, employee benefits, materials, equipment, and/or professional services in connection with the Project, at the request of and for or on behalf of Contractor, have been or will be paid through the period stated in No. 5 above from funds already received or to be received from this payment. No person, firm, corporation, union trust fund, or other entity who has furnished labor, employee benefits, materials, equipment, and/or professional services to Contractor for the Project has any right to file a claim or lien against the Project or against the Contractor's Bonds, or any retained percentage, except as follows: (none, unless otherwise stated);
2. The prevailing wages have been paid in accordance with the pre-filed Statement or Statements of Intent to Pay Prevailing Wages on file with the Port;
3. There are no federal, state, or municipal taxes, warrants, levies, or other charges, unpaid or delinquent, which constitute an encumbrance, claim, or lien against the Project, the Contractor's Bonds, or the retained percentage. No government agency may file a warrant, lien, levy, or other encumbrance against the Project, the Contractor's Bonds, or the retained percentages, except as follows (none, unless otherwise stated);

4. The undersigned Contractor agrees to indemnify and hold the Port (including the Port's commissioners, employees, officers and agents) harmless from any and all claims which might be filed contrary to the warranties made above and to defend any such claims without any cost, expense, or damages, to the Port;
5. The undersigned Contractor, in consideration for the Payment Amount shown above, hereby forever releases the Port, its sureties, and any bond or retainage from any and all claims arising under or in connection with the Project during the period covered and accepts said payment as full compensation and consideration for the Work performed upon said Project which is the subject of this payment, including any and all change orders, miscellaneous charges, extra Work, delays, etc. The undersigned Contractor hereby represents and attests that to the best of Contractor's knowledge, information, and belief, the construction has progressed to the point indicated, the quality of Work covered by this Release and Certificate of Payment is in accordance with the Bid Documents, and Contractor is entitled to payment in the amount requested;
6. To the best of Contractor's knowledge, all materials provided and/or installed on the Project to date are asbestos-free and lead-free materials.
7. This certificate is made by the undersigned Contractor with a full understanding of the facts set forth herein, and for the purpose of inducing the Port to make payment to Contractor on the assurance that there are no liens, claims, or other encumbrances, except as described above, arising from the labor, materials, and/or equipment furnished by Contractor for the Project, which may be asserted in any way against the Project or the Port; and
8. The person signing this document, regardless of whether they are signing in a representative capacity, specifically represents that they have reviewed the relevant records of Contractor, and have personal knowledge that all lienable claims referred to above have been paid. The undersigned also represents that they have been duly authorized to sign this Release and Certificate of Payment and to make the representations set forth above on behalf of Contractor.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

**CONTRACTOR**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signed at: \_\_\_\_\_, Washington

## ATTACHMENT A

### A1. Contract Drawings and Technical Specifications

The following Contract Drawings and Technical Specifications for the BREMERTON NATIONAL AIRPORT MAINTENANCE SHOP & VEHICLE WASH OIL-WATER SEPARATOR are included with the Contract Documents, are hereby incorporated by reference, and made a part of this Contract as if they were attached:

|                    |
|--------------------|
| Contract Drawings: |
|--------------------|

| <u>Sheet No.</u> | <u>Sheet Title</u>                      |
|------------------|---|
| 1 G-01 .....     | COVER SHEET                             |
| 2 G-02 .....     | SURVEY CONTROL AND EROSION CONTROL PLAN |
| 3 G-03 .....     | CONSTRUCTION SAFETY AND PHASING PLAN    |
| 4 G-04 .....     | EROSION CONTROL DETAILS                 |
| 5 C-01 .....     | DEMOLITION PLAN                         |
| 6 C-02 .....     | STORMWATER PLAN                         |
| 7 C-03 .....     | STORMWATER DETAILS I                    |
| 8 C-04 .....     | STORMWATER DETAILS II                   |

|                           |
|---------------------------|
| Technical Specifications: |
|---------------------------|

| <u>Section No.</u> | <u>Section Title</u>  |
|--------------------|---|
| 01160              | General Requirements  |
| 01300              | Airport Safety  |
| 01406              | Construction Staking  |
| 01700              | Project Closeout  |
| Item               | C-102 Temporary Erosion and Sediment Control                        |
| Item               | C-105 Mobilization  |
| Item               | D-701 Pipe for Storm Drains and Culverts                            |
| Item               | D-751 Manholes, Catch Basins, Inlets and Inspection Holes           |
| Item D-752         | Concrete Culverts, Headwalls, and Miscellaneous Drainage Structures |

### A2. Reference Documents

- SOLICITATION: SMALL WORKS #JDC-25-0011: BREMERTON NATIONAL AIRPORT MAINTENANCE SHOP & VEHICLE WASH OIL-WATER
- ADDENDUM 1 TO SMALL WORKS #JDC-25-0011: BREMERTON NATIONAL AIRPORT MAINTENANCE SHOP & VEHICLE WASH OIL-WATER

### A3. General Notes

- A3.1 Materials: All materials and construction shall be as indicated on the Contract Drawings and Technical Specifications.
- A3.2 Specifications: In the event there is a conflict in the Contract information, the following order shall be used for determination as to which prevails: a) the Contract Documents; b) Scope of Work; and c) Local Codes.

- A3.3 Mobilization: Mobilization shall include all work and costs associated with mobilizing Contractor's equipment and materials to the Project Site ready to begin Work. When the Project is complete, demobilization shall include all work associated with removing all equipment, disposable materials, and miscellaneous materials from the Project Site and leaving the Project Site in a clean and orderly manner.
- A3.4 Regulations: Contractor shall fully comply with all federal, state, and local laws and regulations to protect the public and its employees during the Project.
- A3.5 Insurance: The Port has determined that Contractor's Pollution Liability Insurance is not required for the Project, as identified under Section 11 of the Contract.
- A3.6 Permits: The Port will obtain the permits identified in the Contract Documents; Contractor is responsible for obtaining all other permits required to complete the Project scope of Work, including the electrical permit. The Contractor must comply with any and all permit conditions.
- A3.7 The Contractor shall provide a Schedule of Values for all lump-sum bid items following Contract execution.
- A3.8 The Contractor shall provide submittals for all materials and Work items to be performed or installed. A list of submittals shall be prepared and provided to the Owner along with the Schedule of Values.
- A3.9 The Contractor shall remove all demolition materials and construction related debris from the Project Site at the completion of Work. Final site cleanup and restoration to be approved by the Port.

## **PORT OF BREMERTON**

### **AGENDA SUMMARY**

Agenda Item No:    Action Item #2  
Subject:             Marina Emergency Repairs  
Exhibit:             Resolution 2025-06 Declaring an Emergency  
Prepared By:        Jim Rothlin, Chief Executive Officer  
Meeting Date:        October 14, 2025

#### **Summary:**

On September 18, 2025, a 128' tugboat, known as Dominion, sank within the Bremerton Marina. Marina staff received the report of the incident and immediately reported to all required agencies and is working hand in hand with DOE, USCG, the vessel owner, and the clean-up crews throughout the processes including containment, hazardous waste/fuel cleanup, and salvage efforts.

The event caused a pollution spill of diesel fuel and lube oil. Also, the ship was resting on three converging cables, potentially effecting the breakwater's anchoring system. Washington Ecology and the United States Coast Guard and the Port of Bremerton are all working together to prevent any potential harm to the Puget Sound and the Port's marina facilities.

The process of the above work complies with Exemptions to Competitive Bidding requirements as detailed in RCW 39.04.280 (3)(a) "Present a real, immediate threat to the proper performance of essential functions: or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken."

Resolution No. 2025-06 declares that an emergency existed due to damage caused by the incident, which required the Chief Executive Officer to resolve and prevent further damage to the marina quickly and may require subsequent immediate actions, and that this Resolution is intended to authorize the Chief Executive Officer to take such emergency actions as stated above to address this emergency.

#### **Fiscal Impact:**

The Coast Guard has accessed the Oil Spill Liability Trust Fund to supplement operations and mitigate environmental impacts. The Washington Department of Ecology has mobilized two shoreline cleanup assessment teams (SCAT) and is also monitoring for oiled wildlife. A private contractor was brought in by the Dept of Ecology who will be responsible for the cleanup.

The Port's responsibilities will be to:

- Serve as an Authorized Public Entity under the Derelict Vessel Act (RCW 79.100), with Department of Natural Resources authorization, to take custody of the vessel debris once the Coast Guard has met its responsibilities outlined above.
- Arrange for transport via barge or most appropriate means of the vessel remains to a facility willing and able to receive and dispose of the pieces.
- Provide oversight and custody of the vessel pieces until it is completely disposed.
- Secure funding and manage contracts for towing and disposal of the vessel pieces, which is expecting full reimbursement through the Derelict Impact Funds as well as the Oil Spill Liability Trust Fund.

Recommendation:

Port staff recommend the approval of Resolution No. 2025-06 declaring an emergency existed due to damage caused by the incident, which required the Chief Executive Officer to resolve and prevent further damage to the marina facilities.

Motion for Consideration:

**Move to approve Resolution 2025-06 declaring an emergency under RCW 39.04.280 and waiving competitive bidding requirements.**

**PORT OF BREMERTON**  
**KITSAP COUNTY, WASHINGTON**  
**RESOLUTION NO. 2025-06**  
**DATED: October 14, 2025**

**A RESOLUTION** of the Board of Commissioners, Port of Bremerton, declaring an emergency under RCW 39.04.280 and waiving competitive bidding requirements.

**WHEREAS**, the Port of Bremerton (“Port”) has the authority to award a contract and commence public work after waiving the competitive bid requirements in an emergency situation under the authority provided by RCW 39.04.280, and other Washington law;

**WHEREAS**, pursuant to RCW 39.04.280, in an emergency, the Port Chief Executive Officer may declare an emergency exists, waive competitive bidding requirements, and award all necessary contracts to address the emergency situation;

**WHEREAS**, in the event, the Chief Executive Officer declares an emergency and allows contracts to address such emergency, the Commission must enter a written finding of the existence of the emergency no later than two (2) weeks after award of emergency public works contracts;

**WHEREAS**, on September 18, 2025, a 128’ tugboat, known as Dominion, sank within the Bremerton Marina (the “Location”) causing a pollution spill of an estimated 7,500 gallons of diesel fuel and lube oil and causing potential damage to the Marina Breakwater anchoring system (the “Incident”);

**WHEREAS**, in response to the Incident, the Chief Executive Officer declared an emergency and entered into written public works contracts with Clean Harbors Environmental and Aqua Dive Services (collectively the “Contractors”) to restore the Location;

**WHEREAS**, the Commission of the Port of Bremerton (the “Commission”) has reviewed the contracts the Chief Executive Officer executed with the Contractor(s) to respond to this Incident;

**WHEREAS**, the Commission confirms that an emergency existed due to damage caused by the Incident which required the Chief Executive Officer to quickly resolve and prevent further damage to the Location and may require subsequent immediate actions, and that this resolution is intended to authorize the Chief Executive Officer to take such emergency actions as needed to address this emergency, provided the Chief Executive Officer notifies the Commission as soon as practicable thereafter; and

**WHEREAS**, the emergency situation described above necessitates this Resolution.

**NOW, THEREFORE BE IT RESOLVED** by the Board of Commissioners, Port of Bremerton:

1. **FINDINGS AND DECLARATION.** The Commission hereby and expressly finds and declares, based upon the Recitals above, which are expressly adopted herein as findings, that the Incident caused damages to the Location, which constitutes an emergency situation under RCW 39.04.280 and necessitated, and may further necessitate, a waiver of competitive bidding requirements. The Commission hereby ratifies the contracts the Chief Executive Officer entered into with the Contractors for restoration of the Location.

2. **AUTHORITY DELEGATED TO CHIEF EXECUTIVE OFFICER.** This Resolution further authorizes the Port's Chief Executive Officer to exercise such emergency action as is reasonably necessary under applicable Washington State law generally, Title 53, RCW, RCW 53.12.270 (Delegation of powers to managing official), RCW 39.04.280 for emergency procurement, and Chapter 39.28 RCW (Emergency Public Works). Effective upon signature hereto, the Chief Executive Officer is authorized to exercise such additional lawful authority through the use and direction of Port personnel, services, equipment, and such additional acts as the Chief Executive Officer may find necessary in its sole discretion to properly and safely manage this emergency situation, including to obtain supplies, equipment, personal property, professional, procured or technical services, etc. (including selecting contractors and awarding such contracts as necessary), public works as defined by RCW 39.04.010, and take such other lawful acts, as may be necessary and reasonably related, to respond to the emergency declared hereunder. Specifically, and without limiting the foregoing, the Commission waives the competitive solicitation process(es) for letting public works contracts in response to the emergency situation described herein.

**ADOPTED** by the Board of Commissioners of the Port of Bremerton at the regular public meeting thereof held this 14<sup>th</sup> day of October, 2025 and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission.

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Commission President

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Commission Vice President

ATTEST:

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Commission Secretary