

219102 - #1000

325
JUL. 27. 78

AMENDMENT TO AGREEMENT FOR PARKING

THIS AGREEMENT is made by and between the CITY OF EDMONDS (hereinafter referred to as "City") and the PORT OF EDMONDS (hereinafter referred to as the "Port") as of the date set forth in the last line of this Agreement:

R E C I T A L S :

A. The City and the Port entered into an Agreement with the State of Washington on February 1, 1977, for the development of a fishing pier at the foot of Dayton Street in Edmonds. *cont. p. 90*

B. Because of the State's being unable to participate in the acquisition of the property referred to in paragraph 13(b) of the Agreement of February 1, 1977, the City and the Port entered into a subsequent Agreement for Parking, dated the 21st day of July, 1978.

C. This Amendment to Agreement for Parking shall supersede and rescind the prior Agreement for Parking dated the 21st day of July, 1978.

D. Pursuant to said superseded Agreement for Parking, dated the 21st day of July, 1978, the parties hereto acknowledge that each has paid one-half (1/2) of the cost of acquisition of the subject property, together with one-half (1/2) of the cost of acquisition and development of the subject property after deducting the sum of Twenty Seven Thousand Dollars (\$27,000) from the IAC for improvements to the subject property.

Recording # 8608190065

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS OF THE PARTIES HERETO, THE PARTIES AGREE AS FOLLOWS:

1. Subject Property. The property which is the subject matter of this Agreement is legally described in Exhibit "A," attached to this agreement and by this reference the same is incorporated herein as if set forth in full.

2. Ownership. The property is and shall be owned by the City and the Port with each party owning an undivided one-half (1/2) interest in said property.

3. Use. The property shall be used primarily for parking by fishing pier patrons, but people using Port property and the City beach and park at the foot of Dayton Street shall be entitled to use of said property. In further definition of the same and by reference to Exhibit "C" attached to this agreement, it is agreed:

(a) Parking spaces currently numbered 1 through 41 (the easterly two rows) shall be reserved for the exclusive use of fishing pier patrons, people using Port property and people using the Dayton Street Park and beach between May 1, and October 1, of each year. Between October 1, and May 1, such spaces may be used by the general public.

(b) The Port and City agree that Robert Pantley may lease the use of what is designated as parking spaces 42 through 81 (the westerly two rows of the jointly owned property) for the use of patrons of Pantley's restaurant along with the uses in paragraph (a) of this Section 3.

4. Pantley Lease. The Pantley lease for the use of the above referenced westerly two rows of the subject property shall

begin effective April 1, 1981, and continue until such time as the lease is terminated. The lease may be terminated as follows:

(a) The lease shall remain in effect until December 31, 1981, and thereafter until terminated if both the Port and the City give Pantley one hundred eighty (180) days written notice of termination or, if after December 31, 1983, either the Port or the City gives Pantley one hundred eighty (180) days written notice of termination. The lease may be terminated at any time by Pantley giving the Port and City one hundred eighty (180) days written notice.

(b) Rent for the lease to Pantley shall be paid monthly by Pantley on the first day of each month in an amount to be calculated and determined as follows:

(1) For the year ending December 31, 1981, the monthly rent shall be Five Hundred Twenty Five Dollars (\$525.00) per month.

(2) The monthly rent for each month beginning January 1, 1982, shall be one-twelfth (1/12) of the amount which is nine per cent (9%) of \$10.00 per square foot for the property that is the subject of this lease, to-wit: 12,500 square feet.

(3) After January 1, 1983, and thereafter as long as the lease shall continue, the monthly rent for each year or a portion thereof, shall be increased or decreased by the per cent of change of the Consumer Price Index for Urban Consumers published by the United States Department of Labor Statistics for the

Seattle/Everett area. The percentage change shall first be determined annually for the period beginning January 1, 1982, and ending December 31, 1982, and annually by comparing the same days of each year thereafter. At no time shall the rent be less than Five Hundred Twenty Five Dollars (\$525.00) per month.

(4) In addition to the rent payments referred to in this Section, Pantley shall also pay the applicable twelve per cent (12%) leasehold tax or any other tax that may be required by applicable law.

(c) Pantley shall execute a lease in the form set forth in the lease attached hereto which is incorporated by reference as though fully set forth in this agreement.

5. Distribution of Pantley Lease Rental. Rentals shall be paid by Lessee to the Port. The lease rentals received from Pantley will first be used to cover the expenses of maintenance, operation and regulation of the lot by City and Port. The City and Port shall provide itemization of all expenses to each other, which items shall consist of those matters set forth on Exhibit "B" which is attached hereto and incorporated by reference. The balance of such payments shall be divided equally between the City and the Port.

6. Placement of Signs.

(a) The City and the Port shall place signs on the property designating the applicable use of each portion of the property in the form and according to Exhibit "C" attached hereto and incorporated by reference as though fully set forth. No

changes shall be made to the signs without the express approval of the City and the Port.

(b) Pantley shall not place any signs on the property described in Exhibit "A" or any signs referring to the use of the property described in Exhibit "A" without express written approval of City and Port.

7. Maintenance and Enforcement.

(a) Maintenance of the lot shall be by the City. Enforcement of the parking restrictions shall be conducted by Port personnel or City employees. Port and City agree to defend and hold each other harmless from any claim or action brought against the other as a result of any enforcement activity by the other with respect to the enforcement of the uses pursuant to this agreement.

(b) It is agreed that no overnight parking shall be permitted in any of the parking spaces, 1 through 81.

(c) Penalties for Parking. Any person parking a vehicle in violation of the terms of this Agreement shall be subject to penalty as set forth in the City Traffic and Parking Ordinances and City agrees to enact such ordinances which will allow the City to both cite violators for violation of City ordinances as well as permit the City to tow away such violating vehicles. The City agrees to maintain such ordinances in full force and effect during the term of this agreement.

8. Use of Property After Termination of Pantley Lease. At any time after the lease with Pantley is terminated according to

this Agreement, the entire property, spaces 1 through 81, shall be used for the exclusive use of fishing pier patrons, people using Port property and people using the Dayton Street Park and beach between May 1, and October 1, of each year. Between October 1, and May 1, such spaces may be used by the general public. After such termination all other terms of this Agreement shall remain in effect, except signs shall be changed so that they clearly indicate that the lot is to be used by people using the fishing pier, the beach park and Port property.

DATED this 4 day of FEBRUARY, 1982.

CITY OF EDMONDS

PORT OF EDMONDS

W. H. Harrison
Mayor

Gordon Maxwell
President of Port Commission

ATTEST:

ATTEST:

James Carney Moran
City Clerk

Roger Stubb
Secretary of Port Commission

EXHIBIT "A"

That portion of Government Lot 3, Section 23, Township 27 North, Range 3 East, W.M., described as follows:

Beginning at a point on the north line of said Government Lot 3, said point being 150' distant northwesterly measured at right angles from the center line of the westerly main track of Burlington Northern Inc. (formerly Great Northern Railway Company) as now located and constructed; thence S $47^{\circ}16'30''$ W along a straight line which extended would intersect a point 200' distant northwesterly from said center line of the westerly main track, as measured at right angles to said center line from a point therein 655.9 feet distant southwesterly, measured along said center line, from its intersection with the north line of said Lot 3, said straight line being S $47^{\circ}16'30''$ W, 226.68 feet to the northeasterly margin of Dayton Street; thence S $38^{\circ}17'07''$ E along said margin of Dayton Street 2.95 feet to an angle point; thence S $59^{\circ}03'29''$ E along said margin of Dayton Street, 112.98 feet to a point, said point being 15 feet distant northwesterly measured at right angles from the center line of the Burlington Northern Inc. spur track, as now located and constructed; thence N $41^{\circ}49'31''$ E parallel with said spur track, 287.01 feet to the north line of said Government Lot 3; thence N $89^{\circ}50'52''$ W along the north line of said Government Lot 3, a distance of 123.60 feet to the point of beginning;

Situate in Snohomish County, Washington, containing 25,920 square feet, more or less.

MAINTENANCE ITEMS FOR JOINTLY OWNED PARKING LOT

The following items of maintenance shall be considered as maintenance items referred to in the Amendment to Agreement for Parking. The items shall include but not be limited to:

1. Maintenance of Landscaping,
2. Sweeping,
3. Maintenance of Signs,
4. Marking and Striping.