

AGREEMENT FOR PROJECT GRANT FROM OUTDOOR RECREATION ACCOUNT

Project Title Guest Moorage Renovation/Expansion

Project Number 89-011D

THIS AGREEMENT is entered into by and between the WASHINGTON STATE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION (IAC), acting through its Director and Port of Edmonds a governmental entity eligible to receive funding as described below (Public Agency). The Director of the IAC shall be known hereinafter as the "Director."

GENERAL PROVISIONS

1. Purpose of Agreement.

The purpose of this Agreement is to set out the terms and conditions under which the monetary grant set out below is made from the Outdoor Recreation Account of the General Fund of the State of Washington under the provisions and requirements of RCW 43.99.080 by the IAC to the Public Agency, in aid of an outdoor recreation project (the "project") of the Public Agency.

2. Term of Agreement.

This Agreement shall be effective upon November 3, 1988. and shall terminate only upon mutual agreement of the parties, except as may be otherwise provided elsewhere in this Agreement.

3. Performance by Public Agency.

(A) The Public Agency shall develop and complete the project as it is described in section 4 below, in the Public Agency's application, and in accordance with the Public Agency's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the IAC. That application is incorporated herein by this reference as if fully set forth for the purposes of determining the project description and project goals and objectives.

(B) No expenditure made, or obligation incurred, by the Public Agency prior to the effective date of this Agreement shall be eligible for grant funds, in whole or in part, unless specifically approved by the IAC or the Director. The amounts set out in section 5 below shall be reduced as necessary to exclude any such expenditure from participation.

The project shall be completed no later than December 31, 1990. No expenditure made, or obligation incurred, following this completion date shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the IAC may have under this Agreement, the amounts set out in section 5 below shall be reduced to exclude any such expenditure from participation.

(C) Time of project performance by the Public Agency is of the essence of this Agreement. Failure to timely complete the project as set out in subsection B above is a material breach of the Agreement.

#### 4. Description of Project.

The Project of the Public Agency which is the subject of this Agreement is described in summary as follows:

Remove existing deteriorated pier and transient floats--replacement with transient floats and relocation of sewage pumpout station--all located at mid-marina at the Port of Edmonds. Elements of work to be accomplished under the Project Contract are as follows:

↘ Site Preparation	↘ Access Ramp
↘ Concrete Floats	↘ Utilities
↘ Sewage Pump Station Relocation	↘ Architecture/Engineering

The project is described more fully in the application by the Public Agency to the IAC for grant-in-aid assistance. That application was initially submitted to the IAC by the Public Agency on June 27, 1988, and was approved by the IAC on November 3, 1988.

#### 5. Project Funding.

(A) The total cost of the project for the purposes of this Agreement is 205,111 Dollars; PROVIDED That, if the total cost of the project when completed, or when this Agreement is terminated, is actually less, that actual cost shall be substituted herein.

(B) The value of the contributions by the Public Agency to the Project shall be 102,556 Dollars, or 50 percent of the total project cost, whichever amount is less, at minimum.

(C) Subject to the terms of this Agreement, the IAC agrees to provide 102,555 Dollars, or 50 percent of the total project cost, whichever amount is less, from monies available in the Outdoor Recreation Account of the State's General Fund.

(D) If the IAC has entered into an agreement with the National Park Service, United States Department of the Interior, to contribute Federal Land and Water Conservation Funds to this project, that federal contribution will be -0- Dollars, or -0- percent of the total project cost, whichever is less.

(E) The IAC shall not be obligated to pay any amount beyond the amounts set out in subsection (C) and, if applicable, (D) above unless that additional amount has been approved in advance by the IAC, or by the Director, and incorporated by written amendment into this Agreement.

(F) Disbursement of grant monies by the IAC to the Public Agency under this Agreement shall be made in accordance with chapter 286-24 WAC, all conditioned upon proof of compliance with the terms of this Agreement by the Public Agency. The IAC reserves the right to withhold disbursement of the final ten percent (10%) of the total amount of the grant to the Public Agency until the project has been timely completed and approved by the Director.

(G) The obligation of the IAC to pay any amount(s) under this Agreement is expressly conditioned upon strict compliance with the terms of this Agreement by the Public Agency.

#### 6. Requirements of the National Park Service.

If the project has been approved by the National Park Service, United States Department of the Interior, for assistance from the Federal Land and Water Conservation Fund (see section 5 (D)), the Project Agreement General Provisions as contained in Section 660.3 Attachment B of the Land and Water Conservation Grant Manual as now existing or hereafter amended are made part of this Agreement, and the Public Agency shall abide by these Project Agreement General Provisions. Further, the Public Agency agrees to provide the IAC with reports or documents needed by the IAC to meet the requirements of the Project Agreement or Section 660.3 Attachment B of the Land and Water Conservation Grant Manual.

#### 7. Nonavailability of Funds.

If amounts sufficient to fund the grant made under this Agreement are not available in the State Outdoor Recreation Account or such funds are not appropriated by the Washington State Legislature, or such funds are not allocated by the Washington State Office of Financial Management (OFM) to the IAC for expenditure for this Agreement in any biennial fiscal period, the IAC shall not be obligated to pay any remaining unpaid portion of this grant unless and until sufficient funds are so deposited and/or any necessary action by the legislature or OFM occurs. If the IAC participation is suspended under this section for a continuous period of one year, the IAC's obligation to provide any future funding under this Agreement shall terminate.

The Public Agency shall use any grant funds already received to complete the project to the extent possible and shall devote the project to the uses required under this Agreement unless an alternate use is approved by the IAC or the Director.

#### 8. Termination and Other Remedies.

(A) The IAC may require strict compliance by the Public Agency with the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules and IAC policies incorporated in this Agreement, and with the representations of the Public Agency in its application for a grant as finally approved by the IAC.

(B) The IAC, or the Director, may suspend, or may terminate, the IAC's obligation to provide funding to the Public Agency under this Agreement:

- (i) In the event of any breach by the Public Agency of any of the Public Agency's obligations under this Agreement; or
- (ii) If the Public Agency fails to make progress satisfactory to the IAC or the Director toward completion of the project by the completion date set out in section 3(B) above; or
- (iii) If, in the opinion of the IAC or the Director, the Public Agency fails to make progress necessary to complete any other project assisted with grant funds from the IAC within the completion date set out by agreement with the IAC for that project.

(C) In the event this Agreement is terminated by the IAC, or the Director, under this section or any other section after any portion of the grant amount has been paid to the Public Agency under this Agreement, the IAC may require that any amount paid be repaid to the IAC for redeposit into the Outdoor Recreation Account.

(D) The Public Agency understands and agrees that the IAC may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in section 4 above. However, the remedy of specific performance shall not be the sole or exclusive remedy available to the IAC. No remedy available to the IAC shall be deemed exclusive. The IAC may elect to exercise any, any combination, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity.

9. No Waiver by IAC/Remedies.

Waiver by the IAC of any default or breach shall not be deemed to be a waiver of any other or subsequent default or breach and should not be construed to be a modification of the terms of the Agreement unless stated to be such in writing by the Director, or his or her designee. The IAC does not waive any of its rights or remedies under this Agreement should it:  
(a) fail to insist on strict performance of any of the terms of this Agreement, or (b) fail to exercise any right based upon a breach of this Agreement.

10. Application Representations--Misrepresentation or Inaccuracy a Breach.

The IAC relies upon the Public Agency's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application shall be deemed a breach of this Agreement.

11. Compliance with Applicable Statutes, Rules and IAC Policies

The subject grant shall be governed by, and the Public Agency shall comply with, all applicable provisions of chapter 43.99 RCW, chapter 286 WAC and published IAC policies and guidelines, which are incorporated herein by this reference as if fully set forth.

12. Restriction on Conversion of Facility to Other Uses.

The Public Agency shall not at any time convert any property or facility acquired or developed pursuant to this Agreement to uses other than those for which assistance was originally approved, without the prior approval of the IAC, in the manner provided by RCW 43.99.100 for marine recreation land, whether or not the property was acquired with Initiative 215 funds. ✓

13. Use and Maintenance of Assisted Project.

The Public Agency shall operate and maintain, or cause to be operated and maintained, the property or facilities which are the subject matter of this Agreement as follows:

(A) The property or facilities shall be maintained so as to appear attractive and inviting to the public.

(B) All facilities shall be built and maintained in accordance with applicable state and local public health standards and building codes.

(C) The property or facilities shall be kept reasonably safe for public use.

(D) Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime, so as to prevent undue deterioration that would discourage or prevent public use.

(E) The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

(F) The property or facility shall be open to everyone without restriction because of race, creed, color, sex, religion, national origin, handicap or residence of the user.

(G) The Public Agency agrees to operate and maintain the facility in accordance with all applicable federal, state and local laws and regulations.

14. User Fees and Charges.

User, or other types of fees may be charged at the project described by this Agreement, provided that the fees and charges are commensurate with the prevailing range of public fees and charges within the state for the particular activity involved.

Unless precluded by state law, all revenues from fees and charges which exceed the costs for operation and maintenance of the area from which they were collected must be deposited in a capital reserve fund identifiable within the sponsor's(s') official annual budget(s), for acquisition and/or development of outdoor recreation lands or facilities consistent with the agency's park and recreation plan. Such funds may not be used for operation and maintenance of other facilities. ✓

15. Provisions Applying Only to Acquisition Projects.

The following provisions shall be in force only if the project described in this Agreement is for the acquisition of outdoor recreation land or facilities:

(A) When Federal Land and Water Conservation Funds are part of this Agreement per section 5(D) of this Agreement, the Public Agency agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)-Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and the applicable regulations and procedures of the Department of the Interior implementing that act.

(B) When state funds are included in this project per section 5(C) of this Agreement, the Public Agency agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington (Chapter 240, Laws of 1971, 1st Ex. Sess., RCW 8.26.010), and chapter 468-100 WAC after it becomes effective on April 2, 1989.

(C) In the event that housing and relocation costs, as required by federal law set out in subsection (A) above and state law set out in subsection (B) above, are involved in the execution of this project, the Public Agency agrees to provide any housing and relocation assistance that may be necessary and will assume all administrative costs, with the understanding that eligible relocation costs may be part of the total project cost.

(D) Evidence of Land Value. Prior to disbursement of funds by the IAC as provided under this Agreement, the Public Agency agrees to supply evidence to the IAC that the land acquisition cost has been established as per IAC procedural guidelines, which are incorporated by this reference.

(E) Evidence of Title. The Public Agency agrees to show the type of ownership interest for the property that has been obtained. This shall be done before payment of financial assistance by the IAC.

(F) Deed of Right to Use Land for Public Recreation Purposes. The Public Agency agrees to execute an instrument or instruments which contain (1) a legal description of the property acquired under this Project Agreement, (2) a conveyance to the State of Washington of the right to use the described real property forever for outdoor recreation purposes, and (3) a restriction on conversion of use of the land in the manner provided in RCW 43.99.100, whether or not the real property covered by the deed is marine recreation land. RCW 43.99.100 reads as follows:

"Marine recreation land with respect to which money has been expended under RCW 43.99.080 shall not, without the approval of the committee, be converted to uses other than those for which such expenditures were originally approved. The committee shall only approve any such conversion upon conditions which will assure the substitution of other marine recreation land of at least equal fair market value at the time of conversion and of as nearly as feasible equivalent usefulness and location."

16. Provisions Applying Only to Development Projects.

The following provisions shall be in force only if the project described in this Agreement is for development of outdoor recreation land or facilities.

(A) Construction Document Approval. The Public Agency agrees to submit one copy of all construction plans and specifications to the IAC for review and approval prior to seeking bids on those plans. Review by the IAC will be for compliance with the terms of this Agreement.

(B) Contracts for Construction. Contracts for construction shall be awarded through a process of competitive bidding if required by state law. Copies of all bids and contracts awarded shall be submitted to the IAC. Where all bids are substantially in excess of project estimates, the IAC may, by notice in writing, suspend the project for determination of appropriate action, which may include termination of the Agreement.

(C) Construction Contract Change Order. Any change orders must be in writing and shall be submitted to the IAC. Any increase in the cost of the project as the result of a change order shall be the sole obligation of the Public Agency. No change order shall be issued by the Public Agency which changes the plans or proposals submitted in, or in connection with, the Public Agency's application for assistance for this project, unless that change has been agreed to by the IAC by written amendment to this Agreement.

(D) Installation Payments. Financial assistance provided by this Agreement for development may be remitted to the Public Agency in installments, after receipt of billings, and upon satisfactory evidence of completion of each stage of construction or development. Installment payments shall in no event be made more frequently than monthly.

(E) Nondiscrimination Clause. Except where a nondiscrimination clause required by the United States Department of the Interior is used, the Public Agency shall insert the following nondiscrimination clause in each contract for construction of this project:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to put in a conspicuous place, available to employees and applicants for employment, notices to be provided by the contracting officer, setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
- (3) The contractor will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will include the provisions of the foregoing paragraphs in every subcontract exceeding \$10,000, so that such provisions will be binding upon each such subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the IAC or the Director may direct as a means of enforcing such provisions, including sanctions for noncompliance; PROVIDED, However, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the State of Washington to enter into such litigation to protect its interests."

#### 17. Responsibility for Project.

While the IAC undertakes to assist the Public Agency with the project by providing a grant pursuant to this Agreement, the project itself remains the sole responsibility of the Public Agency. The IAC undertakes no responsibilities to the Public Agency, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as those phases are applicable to this project, is solely that of the Public Agency, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

The Public Agency shall defend at its own cost any and all claims or suits at law or in equity which may be brought against the Public Agency in connection with the project. The Public Agency shall not look to the IAC, or to any of the IAC's employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related in any way to the project, including but not limited to, its design, development, construction, implementation, operation and/or maintenance.

#### 18. Indemnity.

The Public Agency agrees to, and shall, defend, protect and hold harmless the IAC and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all cost of defense and attorneys' fees) and any and all loss of any nature from any and all claims or demands or suits at law or equity, arising from the project, including but not limited to, those arising from the Public Agency's acts,



or failures to act, which result in any loss of any kind to any third party. Such claims or suits include, but are not limited to:

(a) claims or suits by any person or firm furnishing services in connection with the Public Agency's performance under this Agreement; or

(b) claims or suits by any person or firm who or which may allege injury by the Public Agency or its agents arising from the Public Agency's performance of this Agreement or arising from or related to the project to which a grant is furnished hereunder;

(c) any claim or suit resulting from the use of any facilities and/or programs assisted by a grant under this Agreement.

#### 19. Records and Reports.

(A) The Public Agency agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the Public Agency's contracts, contract administration, and payments, including all direct and indirect charges, and expenditures in the development and implementation of the project.

(B) The Public Agency's records related to this Agreement and the project receiving grant funds hereunder may be inspected by the IAC or the Director, or their designees, or by designees of the State Auditor or by federal officials authorized by law, for the purposes of determining compliance by the Public Agency with the terms of this Agreement, and to determine the appropriate level of funding to be paid under the subject grant.

(C) The records shall be made available by the Public Agency together with suitable space for such inspection at any and all times during the Public Agency's normal working day.

(D) The Public Agency shall retain all records related to this Agreement and the project funded hereunder for a period of at least six (6) years following completion of payment of the grant-in-aid under this Agreement.

(E) The Public Agency shall promptly submit to the Director any report or reports required by the Director.

(F) The Public Agency shall submit a final report when the project is completed, prematurely terminated, or project assistance is terminated. The report shall include a final accounting of all expenditures and a description of the work accomplished. If the project is not completed, the report shall contain an estimate of the percentage of completion, and shall indicate the degree of usefulness of the completed project. The report shall account for all expenditures not previously reported and shall include a summary for the entire project.

#### 20. Acknowledgments.

The Public Agency shall include language which acknowledges the funding contribution of the IAC to this project in any release or other publication developed or modified for, or referring to, the project. The Public Agency also shall post signs or other appropriate media at project entrances and

other locations on the project which acknowledge the IAC's funding contribution.

21. Independent Contractor Status of Public Agency.

The Public Agency and the Public Agency's officers, employees and agents shall perform all obligations under this Agreement as an independent contractor and not in any manner as officers or employees or agents of the IAC. Herein all references to the Public Agency shall include its officers, employees and agents. The IAC shall not withhold or pay taxes or insurance or deductions of any kind.

22. Restriction on Assignment.

The Public Agency shall not assign this Agreement, or the performance of any obligations to the IAC under this Agreement, or any claim against the IAC it may have under this Agreement, without the express written consent of the Director.

23. Nondiscrimination.

The Public Agency shall comply with all applicable federal and state nondiscrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, religion, national origin, residence, marital status, or handicap (physical, mental, or sensory) be denied the benefits of, or be otherwise subjected to discrimination under, this Agreement or under any project, program, or activity, funded, in whole or in part, under this Agreement. A violation of this provision is a material breach and cause for termination under section 8 above.

24. Conflict of Interest.

The Public Agency shall not participate in the performance of any duty in whole or in part pursuant to this Agreement to the extent participation is prohibited by chapter 42.18 RCW, the Executive Conflict of Interest Act, or any other federal, state or local similar conflict act which may apply to the Public Agency. The IAC may, by written notice to the Public Agency, terminate this Agreement if it is found after due notice and examination by the IAC or the Director that there is a violation of the Executive Conflict of Interest Act, chapter 42.18 RCW; Code of Ethics for Public Officers and Employees, chapter 42.22 RCW; or any similar statute or ordinance involving the Public Agency in the procurement of, or performance under, this Agreement. The existence of facts upon which the IAC or the Director makes any determination under this section may be an issue under, and may be reviewed as is provided in, the disputes section of this Agreement, section 25, upon agreement of the parties.

25. Disputes.

When a bona fide dispute arises between the IAC or its Director and the Public Agency which cannot be resolved between these parties, the parties may agree that the disputes process set out in this section shall be used prior to any action being brought in court. Either party may request a disputes hearing hereunder. The request for a disputes hearing must be in

writing and clearly state: (a) the disputed issues; (b) the relative positions of the parties regarding those issues as then understood by the requesting party; (c) the Public Agency's name, address, project title, and the IAC's project number. In order for this section to apply to the resolution of any specific dispute or disputes the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues.

The dispute shall be heard by a panel of three persons consisting of one person chosen by the Public Agency, one person chosen by the director and a third person chosen by the two persons initially appointed. If a third person cannot be agreed upon, the third person shall be chosen by the chairperson of the IAC.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based upon written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that party shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party at the address set out in section 30 below. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

#### 26. Governing Law/Venue.

This Agreement shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in the Superior Court in and for Thurston County.

#### 27. Severability.

If any provision of this Agreement or any provision of any law, rule or document incorporated by reference into this Agreement, shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which legally can be given effect without the invalid provision. To this end the provisions of this Agreement are declared to be severable.

#### 28. OSHA/WISHA.

The Public Agency represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the Public Agency's performance under this Agreement. The Public Agency further agrees to indemnify and hold harmless

the IAC and its employees and agents from all liability, damages and costs of any nature, including but not limited to costs of suits and attorneys' fees assessed against the IAC, as a result of the failure of the Public Agency to so comply.

29. Headings Not Controlling.

Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.

30. Notices.

(A) All written communications which are to be given to the Public Agency under this Agreement will be addressed and delivered to:

Name: Bill Stevens  
Title: Assistant Manager, Port of Edmonds  
Mailing Address: 336 Admiral Way  
Edmonds, WA 98020

(B) All written communications which are to be given to the IAC under this Agreement will be addressed and delivered to the IAC, 4800 Capitol Boulevard, KP-11, Tumwater, Washington 98504-5611.

(C) The above shall be effective until receipt by one party from the other of a written notice of any change.

31. Additional Provisions or Modifications of Standard Provisions.

32. Entire Agreement.

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof. Commitments, warranties, representations and understandings or agreements not contained, or referred to, in this Agreement or written amendment hereto shall not be binding on either party. Except as may be expressly provided herein, no alteration of any of the terms or conditions of this Agreement will be effective without the written consent of both parties.

STATE OF WASHINGTON INTERAGENCY  
COMMITTEE FOR OUTDOOR RECREATION  
ROBERT L. WILDER

BY:   
Director

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


PUBLIC AGENCY

BY: 


Title: Assistant Manager

Date: 12/2, 1988

Approved as to form this 5<sup>th</sup>  
day of December, 1988.

By:   
JEFFREY G. LANE  
Sr. Assistant Attorney General  
Attorney for IAC

Approved as to form this 21<sup>st</sup>  
day of December, 1988.

By:   
Attorney for Public Agency