

COPY

A G R E E M E N T

THIS AGREEMENT made between the State of Washington, Department of Fisheries, the City of Edmonds and the Port of Edmonds, hereinafter referred to as the State, City and Port respectively, is entered into for the purpose of construction, maintenance and operation of a public fishing pier and related facilities:

W I T N E S S E T H

1. Nature of Agreement

This instrument in five pages is intended to set forth the responsibilities of the City of Edmonds, Port of Edmonds, and the State of Washington, Department of Fisheries, with respect to the acquisition, development, ownership, maintenance, and operation of the fishing pier facility at the Edmonds Boat Harbor.

2. Project Description

The public fishing pier facility which is the subject of this agreement is that described in Exhibit A attached hereto and shall be hereinafter referred to as the facility.

3. Term

This agreement shall be in effect for the entire useful life of the facility, or thirty (30) years, whichever occurs sooner, unless otherwise agreed to in writing by all parties to this agreement.

4. State Responsibilities

The State of Washington, Department of Fisheries shall:

- (a) acquire and hold necessary harbor area property rights for the facility and its development as well as payment of any fee for rental thereof without compensation from either of the other parties to this agreement. This shall not be construed to mean that the Port of Edmonds shall relinquish or give up any property right or rights excepting those rights required for the development, operation and maintenance of the facility, which rights will be granted without compensation to the Port.
- (b) develop and pay for the development of the facility including payment for planning, engineering and construction of the project.
- (c) accept responsibility for and pay for major renovations, reconstruction, or demolition of facility or any part thereof subject to funds being available but the lack of available funds shall not place the burden nor create an obligation on either the Port or the City for such renovation, reconstruction or demolition of the facility.

(d) reserve until June 30, 1979, \$27,000 of the money made available for the project for parking acquisition and/or development which sum shall be used for acquisition of parking if the Port and City determine the need therefor.

5. City Responsibilities

The City of Edmonds shall:

- (a) provide all normal maintenance and operation for all portions of the fishing pier facility to be constructed under this agreement and shall further maintain all utilities on the facility. The term normal maintenance as used herein shall be limited to the walking surface, railings and other facilities located on said walkway such as any out buildings. Repairs to the supporting structure or structures shall be made as provided in paragraph 4(c) of this agreement. Standards for such operation and maintenance are as follows:
- I. The facility shall be maintained so as to appear attractive and inviting to the public.
 - II. The facility shall be maintained in accordance with applicable public health standards.
 - III. The facility shall be kept reasonably safe for public use.
 - IV. The facility shall be kept in reasonable repair throughout its lifetime so as to prevent undue deterioration that would discourage public use or lead to the need for reconstruction.
 - V. The facility shall insofar as possible, be kept open for daily public use at reasonable hours throughout the year as determined by the City.
 - VI. The facility shall be open for the use of all segments of the public on a first come first served basis without restriction because of the race, creed, color, sex, religion, national origin, or residence of the user except that the City may establish minimum age requirements or the necessity for adult supervision when the City should deem it advisable in order to protect the safety and health of persons. The City may also impose such other use restrictions as it deems necessary for the public health, safety or welfare. Copies of all restrictions so imposed shall be sent to the Director of the Washington State Department of Fisheries for their information or review.
- X (b) maintain and operate any and all pier facility related parking areas which are acquired with State financial assistance.
- (c) provide police and fire protection on and for the facility.

(d) the City shall have sole authority to operate or permit the sale of tackle, bait and other goods or services determined by the City to be necessary for convenient and successful use of the facility and any and all proceeds from any such sales operated in connection with said facility. The proceeds shall be applied to the cost of operating and/or maintaining the facility.

Handwritten initials and signature:
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(e) have the right to impose use fees and receive all such fees, provided that the revenues in excess of collection cost shall be applied toward the cost of operating and maintaining the facility, and provided further, that the State shall have the right to require and receive accounting reports on such fees and the use thereof. No such fees shall be imposed without prior approval of the Director of the Washington State Department of Fisheries.

6. Port Responsibilities

The Port of Edmonds shall:

(a) be responsible for the maintenance of the rock breakwater at the point where the pier crosses over it but the Port shall not be responsible for making any alterations or changes necessary for the construction of the facility.

(b) pay for electricity used for lighting the pier but not for any additional concession or other facilities thereon.

(c) dispose of garbage after it is placed by the City in the Port's onshore container.

(d) remove and dispose of drifting hazards in the water in the vicinity of the facility when in the judgment of the Port a hazard or dangerous condition could occur.

(e) have the right to make an attachment on the southerly side of the access walkway to provide additional docking, moorage or berthing facilities within the Boat Harbor which facilities would be under the complete control of the Port. Such attachment shall not interfere with the main purpose of the pier, which is to provide public recreational fishing. In the event such additional facilities are installed the Port will pay a proportionate amount of the maintenance and operation costs to the City of the pier walkway depending upon the use of the walkway, which share shall be agreed upon by the Port and City prior to such additional facility being constructed.

(f) upon abandonment by the City and State, or upon termination of this agreement, the Port shall have the right to assume ownership of any portion of the facility remaining on property leased or owned by the Port of Edmonds.

7. It is expressly understood and agreed that the Port of Edmonds is not and shall not be the agent of the City of Edmonds for the purposes of operation and maintenance of the facility.
8. This contract shall be interpreted by the laws of the State of Washington.
9. Any and all suits which any party shall institute for enforcement of this agreement in any respect shall be instituted in the Superior Court for the County of Snohomish, State of Washington. All parties hereby consent and agree to the jurisdiction of said Court.
10. In any action brought in said Court by the parties to this agreement the rights and remedies of each party may be enforced consecutively or concurrently and the adoption of one or more rights or remedies shall not operate to prevent any party from exercising any other or further remedy given to any such party under this agreement.
11. No waiver of any breach of this contract by any of the parties shall be held to be a waiver of any other or subsequent breach by any party.
12. The City, State and Port agree to hold each other harmless from claims by third parties for bodily injury and property damage when the cause or alleged cause of such bodily injury or property damage arises solely from the failure of an indemnifying party to fulfill the requirements of this agreement.
13. Parking shall be provided for the facility by the City and Port in accordance with the following:
 - (a) The City shall lease a portion of the Burlington Northern depot lot south of the depot for pier parking at the cost of the City.
 - (b) In the event the Burlington Northern property at the northwest corner of Dayton Street and Railroad Avenue becomes available for sale by Burlington Northern Railway Company, the City and Port shall use the money provided in paragraph 4(d) of this agreement to purchase said property for fishing pier parking. The remaining costs of acquisition shall be borne equally by the Port and the City. The City shall use its eminent domain powers to acquire the property if necessary. In the event the property is acquired the City may discontinue leasing of a portion of the depot lot referred to herein-above.
 - (c) If the property referred to in (b) above shall not be acquired, the Port and the City agree to acquire other suitable property to provide parking as shall be agreed upon by said parties, which shall be acquired and paid for in the same manner as provided in (b) above.

14. Neither the City nor the Port shall be required to maintain insurance for the replacement of the facility from loss by any cause including fire, earthquake, natural elements or intentional or negligent act of any person or persons. Risk of loss of the facility shall be borne by the State.
15. This instrument contains the entire agreement between the parties and no statement, promises, or inducements made by the Department or its agents that is not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by all parties.

DATED as of this 1st day of February, 1977.

STATE OF WASHINGTON

By: *Stanley H. Cant*
(Title)

CITY OF EDMONDS

PORT OF EDMONDS

By: *Harold J. Bruckner*
President of the Port Commission
of Port of Edmonds

By: *H. H. Harrison*
Mayor, H. H. Harrison

ATTEST:

Irene Varney Moran
City Clerk, Irene Varney Moran

ATTEST:

By: *J. P. Guttenden*
Secretary