

**AGENDA FOR  
PORT OF ILLAHEE COMMISSION  
Wednesday, August 11, 2021 - 6:30 p.m.  
ZOOM MEETING #715 0997 5823 / Password: Illahee**

**1. CALL TO ORDER**

**2. CONSENT AGENDA**

1. Agenda

\*2. July 14, 2021 Regular Meeting minutes

\*3. July 26, 2021 Kitsap All Ports Meeting minutes

\*4. Pay Bills with check numbers 4775 through 4784 totaling \$ 15,336.71

**3. SIGNING OF DOCUMENTS** - Determine when/how to have at least 2 Commissioners sign the documents

**4. PUBLIC COMMENT**

**5. REPORTS/UNFINISHED BUSINESS**

Aho \*1. Grants/Waterfront Access Improvements

- RCO Grant Agreement received – signed and returned?

- Budget discussion / matching funds

- Commissioner Aho met with County Commissioner Ed Wolfe - any update re: the County installing a filtration system while the property is being developed?

- Any possibility of mitigation credit for Port's efforts through the years?

- Status of discussion with Kim Sellars about the Waiver of Retroactivity for the Illahee Store purchase being used as matching funds for future grant

Haaland 2. Treasurer's Report as of July 31, 2021 General Fund \$ 20,950.18; Investments \$ 286,937.46  
Good Property Management (GPM) Account \$ 200.00 (total: \$ 308,087.64)

3. Reports

Aho a. Website

- Status of the Illahee Creek Watershed Report/Surface Water Management Plan (SWMP) and the mussel sampling (PSNS & County) results being added to the website

Buesch b. Properties

5560 Ocean View Boulevard/Rental

- Did Dave with Dave's Septic submit the new reserve drain field plan to the Health Department

- Next steps at separating the two lots?

- Appraisal timeline

- Amount owing on the bond – approximately \$147,000. A quick review of the bond paperwork doesn't list the reserve drain field lot.

5500 Illahee Road/Rental

- Anything to report?

5507 Illahee Road/Illahee Store Property

- Status of amount owing on tax statement

- Recap of discussion with Dave's Septic about installing holding tanks on the property

- PLIA working on Project #14 – the Port is Project #16 with the cleanup anticipated to begin in 2022

Burton c. Dock/Pier

- Status installation of the two larger signs

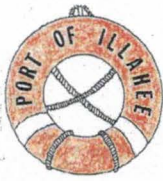
- Status of light connection box repair

- Status of installation of the polyethylene material to the poles

- Derelict boat moved from the dock

Tabled 4. Surveillance installed at the Illahee Store property once electrical is available

5. Administrative – status of the Interlocal Agreement with the Port of Silverdale



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**5. REPORTS/UNFINISHED BUSINESS continued**

6. Meetings – next meeting will be held at the Illhaee Store – 5507 Illahee Road. The October meeting was scheduled to be held at the Seeds of Grace building. Upon informing the Seeds of Grace point-of-contact it was determined that they no longer hold building insurance, which creates a liability issue.
7. Illahee Day – Saturday, September 11<sup>th</sup> – time?
- \*8. Kitsap Sun article

**6. NEW BUSINESS**

- \*1. Small Ports Seminar – scheduled for October 21<sup>st</sup> through 22<sup>nd</sup>. Reservations at the Enzian Inn can be made now (October 20<sup>th</sup> with checkout on the 22<sup>nd</sup>).

**7. PUBLIC COMMENT**

**8. EXECUTIVE SESSION**-Property negotiation or Potential litigation?

**9. ADJOURN** – Regular Port meeting – Wednesday, September 8, 2021 @ 6:30PM – In-person at Illahee Store Illahee Day!!!? – Saturday, September 11, 2021



## Port of Illahee – Minutes of Regular Meeting on July 14, 2021

Port of Illahee  
Minutes of Regular Meeting  
July 14, 2021

Although the State has recently reopened it was decided to continue to hold the Regular Port of Illahee meeting virtually through the ZOOM app (meeting id# 71509975823 / Password: Illahee). Notice of the virtual meeting was posted near the kiosk at the head of the pier and on the Port's website – portofillahee.com.

### CALL TO ORDER

Commission Chairman James Aho called the meeting to order at 6:30 PM. Also, in attendance were Commissioner Jonathan Buesch; Commissioner John Burton; Administrator Theresa Haaland; Lee Knapp of TIKAR Services; Roy Barton; and Monica Wood.

Commissioner Aho requested the addition of Illahee Day under the New Business section of the Agenda. Commissioner Burton requested the email sent from Kitsap Sun reporter, Josh Farley, also be discussed under New Business.

### CONSENT AGENDA

*Commissioner Buesch moved to approve the consent agenda items: July Meeting Agenda as amended; June 9, 2021 Regular Meeting minutes; July 14, 2021 checks numbering 4761 through 4774 totaling \$13,975.64 as outlined in the attached Voucher Approval; second by Commissioner Burton; approved unanimously.*

### SIGNING OF DOCUMENTS

Commissioners Aho and Buesch will stop by the Silverdale Port office individually sometime by Friday to sign documents and Commissioner Burton will stop by on Monday.

**PUBLIC COMMENT** – Monica Wood explained that she was attending the meeting because she is curious about the store and the status of it. Commissioner Aho explained that the Pollution Liability Insurance Agency (PLIA) will be completing the remediation of the contaminated soil at the store property possibly next year and basically everything is contingent upon the cleanup of the underground storage tanks. This will be further discussed later in the meeting.

Roy Barton said that he didn't notice anything about the Port's Department of Natural Resources (DNR) lease within John Piccone's July 13, 2021 email summarizing his efforts on the waterfront project. Mr. Barton said that his concern is that the Port is doing all of this work, but doesn't actually have a lease from the DNR for the use of the outer-water area. Commissioner Aho said that Mr. Piccone is aware of the need to renew the DNR lease and it is included within the permitting documents.

### REPORTS/UNFINISHED BUSINESS

#### Grants/Waterfront Access Improvements –

The Recreation Conservation Office (RCO) published the grant award list. The Port of Illahee was successful for the Aquatic Lands Enhancement Account (ALEA) in the amount of \$500,000 and the Boating Facilities Program (BFP) in the amount of \$851,065. Commissioner Aho explained that the Port will need to come up with \$611,000 in matching funds. The Port will be conducting just shy of \$2,000,000 worth of work next year. Currently, the Port has about \$300,000, so coming up with \$611,000 in matching funds is a big issue for a small Port. Ms. Wood asked if the Port can fundraise like what was done with the Lost



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Continent. Commissioner Aho explained that this is different. The Port depends on tax revenue and rental money. He said that the Port basically needs to come up with an additional \$300,000 for the Waterfront Project and he anticipates the improvements to the store to cost an additional \$100,000. He said that the Port does need to come up with some significant funds. He referred to Commissioner Buesch to discuss Dave's Septic Design's report. Commissioner Buesch explained that Dave's Septic Service provided a schematic that shows the ability to include the reserve drain field within the 5560 Ocean View lot.

Commissioner Buesch said that he met with Dave and Kitsap County Health Department personnel at the 5560 Ocean View property last month. At first, they questioned if there was enough undisturbed quality drain field ground at the Ocean View property, but they concurred that what is on paper isn't necessarily the only ground that could be used as part of the existing drain field. It basically all boils down to square footage, which the property has more than enough. From there Dave drew up the schematic and it is believed that once he receives payment from the Port, which has been authorized within the Consent Agenda, he will submit the schematic to the Kitsap County Health Department so they can sign off on it. According to Dave it is pretty much a done deal. Commissioner Buesch explained that he will hold Dave's check so that he can meet him in person to confirm the next steps. This is good for the Port as it will untie the current reserve drain field lot, which fronts Illahee Road, from the Ocean View lot, so that it can be sold separately. Commissioner Aho said that the proceeds from these two Port assets can be used towards matching funds to the Waterfront Project and the renovation of the store. The amount owed

on the bond for the Ocean View property was estimated in the low \$150,000's. Commissioner Buesch said that the house could probably sell between \$500,000 and \$600,000. He said it is an older house, it doesn't have much of a yard, but it has a beautiful view. He suggested that once the two lots are officially untied appraisals for both be ordered. Commissioner Burton said that \$612,000 is a lot of money for the Port to come up with. He asked about the matching grants that were discussed early on. Commissioner Aho explained that the Port originally applied for three grants (ALEA, WWRP & BFP). The WWRP grant would have been used to match the ALEA grant, but since we weren't successful with the WWRP grant the Port needs to come up with the match for ALEA. In the past many Ports had been successful in both of the grants and used them as matching funds towards the other, but this year projects that included acquisition took precedence basically scoring higher, leaving no money for the lower ranking projects. Commissioner Aho took responsibility for talking about the WWRP grant being used as a match. He added that it is very disappointing, but the Port is fortunate to have other assets that can help with funding the project. Commissioner Burton reported that he walked around the dock the other day with Lee and Tim of TIKAR and it was agreed that between the surface of the deck boards and the status of the pilings the Port must go forward with either replacement or repair, either way it will be significant costs. He agreed that the other assets may need to be sold in order to pay for the necessary upgrades and maintenance to the dock. Commissioner Aho agreed and said that the appraisals should be pursued. Even though we are not looking at construction to begin until 2022, we need to be



## Port of Illahee – Minutes of Regular Meeting on July 14, 2021

ready. Commissioner Buesch said that the appraisals will have to wait until the two properties are officially separated. Everyone agreed. Commissioner Buesch said that he should have a better idea of the timeline when he talks to Dave. He questioned if ordering the appraisals should be authorized tonight so that once the two properties are separated, the appraisals can be ordered. It may require some sort of boundary line adjustment from the County, so it may take a while. It was decided to add the appraisal item to next month's agenda. Commissioner Aho said that we have some time, but the Port's Preliminary Budget is due to be approved in October with the Final due to be approved in November. Mr. Barton looked up the map of the two properties and said that they are definitely two separate lots, so a boundary line adjustment should not be needed. He suggested the loan on the property be looked into to insure that won't affect separating the two lots. He also suggested getting some sort of approval to build on the Illahee lot to include installation of a septic, as that will no doubt increase the value when trying to sell. Commissioner Buesch explained that the lot just south of the Port's lot is the same size and it was developed, so didn't see that being a problem. Houses are also being built on the four lots south of the Port's lot, although they are believed to be a bit larger. Commissioner Buesch said that Mr. Barton is right about the extra lot possibly being tied to the Port's bond. If it is, some sort of modification will need to be made. Commissioner Aho said that efforts must continue moving forward with the property. Commissioner Buesch plans to continue with the attempts at separating the two lots.

Commissioner Aho said that he is trying to work with the County about having them install a filtration unit when the Port is developing the area in an effort of having it complete without the County coming back at a later date needing to dig up the area. Commissioner Aho wants to get a quote on the costs of a filtration unit. He believes it is around \$100,000. Commissioner Buesch clarified that it would basically be a County expenditure on Port property. Commissioner Aho said that with the Port paying for the earthwork, the County would actually save to have the unit installed at that time. It just makes sense to have it completed at that time. Commissioner Buesch suggested the County be asked to pitch in on the costs for the asphalt, just to cut down on the Port's costs. Commissioner Aho said that as much as the County spends on projects, if a unit is roughly \$100,000 it seems they would be able to make that work, especially considering it is going to slow the sediment running through that area. Mr. Piccone is the ideal guy to have working for the Port as he has worked with the County Stormwater Division in the past.

Commissioner Aho has talked to Mr. Piccone about the possibility of the Port receiving mitigation credits for all the work and money the past Port Commissioners completed towards the environment. Mr. Piccone said that State agencies who determine mitigation credits look at the present not the past when determining credits. Commissioner Buesch asked about the Waiver of Retroactivity the Port submitted to the RCO with the store purchase. Commissioner Aho said that Mr. Piccone looked into it and said that there just wasn't much credit for it due to the restrictions affiliated with it. Commissioner Aho said that a lot



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of work was done to submit that and he plans to further discuss it with the Port's RCO grant manager, Kim Sellars, just to make doubly sure the money that went towards the purchase of the store can't be used towards matching funds.

### Treasurer's Report

As of June 30, 2021 the General Fund totaled \$31,818.40, Investments totaled \$286,854.65 and the balance of the Good Property Management account totaled \$200.00.

### Commissioners' Reports

Website – nothing to report.

### Properties

5560 Ocean View Boulevard/Rental Property – already discussed under 5.1. Reports/Unfinished Business: Grants/Waterfront.

5500 Illahee Road/Rental Property – nothing to report.

5507 Illahee Road/Illahee Store Property – already discussed under 5.1. Reports/Unfinished Business: Grants/Waterfront. Commissioner Buesch added that he has not heard from attorney Bagwell about the outstanding taxes shown owing on the tax statement for the property. He plans to call him next week.

Commissioner Aho sent an email to Carrie Pederson of PLIA informing her that the Port was successful with two RCO grants and that the Port expects construction to begin in 2022. He asked the status of the store cleanup. Ms. Pederson responded explaining that they have actively been working on the 2017 award year list and have completed two cleanups and are working on the project that was ranked 14. The Port ranked

number 16. She said that they had hoped to get to the Port site this year, but wasn't exactly sure when that might happen. She said that PLIA will continue to work down the ranked list and reach out to the Port when they are ready for Illahee's site. So, it is anticipated that if the PLIA cleanup of the store property isn't completed this year, it will be completed in 2022, which will fit perfectly with the store renovation and the waterfront project. Commissioner Buesch said that since PLIA will be digging up that area, that will be the ideal time to install a septic holding tank. Commissioner Aho agreed and suggested Commissioner Buesch talk with Dave of Dave's Septic about the situation. It is believed that there are currently three underground tanks – two 4,000-gallon tanks and one 6,000-gallon tank. There is a lot of room for a significantly large septic holding tank. It was thought that Dave might be able to provide his thoughts about installing the holding tank and the size of the holding tank and then that information can be provided to Mr. Piccone. Commissioner Buesch said that when the remediation is completed it will be just one big hole, so the Port should be able to put in as big a tank as possible. He said that he will further discuss this with Dave when he sees him next week.

Dock/Pier – Commissioner Burton reported that all but one of the signs he ordered has been received. He decided they need backing because the material that was used for the signs was brittle. He purchased plywood and provided it to TIKAR so they could perform the installation since they have the necessary equipment to safely install them. Lee reported that all of the signs have been installed except for the two large moorage signs that go on the outside of the two light posts. He



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plans to install them when he has TIKAR's workboat in the water next Friday. He explained that the signs are heavy and doing it from the boat is safer. Commissioner Burton said that he has asked the sign maker to create a tilted angle bracket for the angled sign on the pier. The private property sign that washed away has not yet been delivered. The sign maker is trying to come up with a different bracket design so that it stays in place. The Port Rules signs have been added to the pier, the kiosk and one was attached to the store. Commissioner Burton had noticed that the paper rules sign that was posted on the kiosk had been torn down. Lee has secured many loose deck boards, but plans to install more large lag screws when he is down there next. Commissioner Burton said that fastening down the deck boards is going to be ongoing to keep it safe. He anticipates the deck boards to only be good for another year or two. TIKAR did replace the broken light and determined that the connection box behind it was also broken, so that too needs to be replaced. Commissioner Burton had talked with Tim about the issue of kids climbing on the light posts and damaging the lights. Tim suggested they install polyethylene to the poles as it will make it nearly impossible for anyone to climb them as it will be very slippery.

Commissioner Burton said that once power is available at the store property surveillance equipment needs to be installed. Some community members are discussing forming a neighborhood watch group and he believes there will be a request to the Port to support it. Installing surveillance cameras would be a good way in doing that. Commissioner Burton reported that he has picked up little pieces of foil debris that is believed

to be related to heroin use and other drug debris/paraphernalia. A broken-down boat is currently tied at the floats. Commissioner Burton has talked with the owner and informed him he has until today to move the boat before the fine process begins. He explained that the boater that part of the Port's rules and regulations state that any vessel tied to the Port facility must be seaworthy and able to move with its own power. Since the boat is not able to move on its own the Port is in a legal position to begin fining the owner. He explained that we haven't had to do this to a boater up to this point, but the next steps need to be explored. Apparently, this same boat was at the Port of Brownsville for many months until they got it to move along. The owner said that he just bought the boat last week. He has been working on it even brought another motor down that also didn't work. It does have a 2022 registration. The boat registration number is WN5787JD. If it's not moved soon, Commissioner Burton plans to contact the Washington State Department of Natural Resources (DNR) and further discuss. This will also be brought up at the upcoming Kitsap All Ports meeting to determine what the other Ports do in these situations. Commissioner Burton said that since it is a recent sale, the only information he might be able to find is on the previous owner. The forward mooring line broke free the other day and Commissioner Burton along with the help of some kids, that were swimming down there, were able to secure it back to the dock. Commissioner Buesch said that with a case like this we certainly don't want to start racking up fines to the point that the owner decides to just walk away. The key is to work with the owner as much as possible without being too threatening as we don't want the headache of being responsible for the boat.



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Commissioner Burton agreed and said that he has been trying to give as much input to the owner to encourage him to move along. It is hoped since he just bought it, he is interested in protecting his new investment.

### NEW BUSINESS

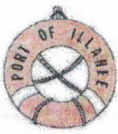
Illahée Day – Commissioner Aho reported that several people have asked him if the Port is going to sponsor Illahee Day this year. Commissioner Burton said that he thinks it's a good idea, but will need to solicit the community volunteers to put it together. Commissioner Aho said that it is normally held in August, but it has been held as late as September. The September Port meeting falls on the 8<sup>th</sup> and that following Saturday is September 11<sup>th</sup>. He suggested Illahee Day tentatively be held on the 11<sup>th</sup>. He will ask the people that have approached him about if they would be willing to organize it. It was suggested Kitsap Sun reporter, Josh Farley, be told about the event. He would be sure to get the word out. It was agreed that if someone was willing to organize it, they would want to know if the Port would be providing the food. In the past the Port has paid for the food. It was catered by McClouds once and another year a couple eight-foot Subway sandwiches were provided, another year it was potluck-style. It has cost the Port a little money, but has been a good community event that a lot of people actually look forward to attending. Commissioner Buesch suggested the Health Department be asked if there are any restrictions due to the COVID19 pandemic, specifically with having any potluck dishes. He said that McCloud's more than likely wouldn't be able to cater it this year, because they have cut their hours a lot because of the pandemic and lack of workers. It

was agreed September 11<sup>th</sup> would be a good day to have the celebration. Commissioner Burton suggested holding the September Port meeting at the store property. Commissioner Aho said that we could set up the tents for the meeting and then just leave them up for Illahee Day.

Meetings – (was missed under Reports/Unfinished Business) - Commissioner Aho said that he did receive a request from one person to continue the meetings via Zoom. Commissioner Aho said that he liked the Zoom meetings, but also like the idea of holding the September meeting outside of the store. It was agreed to hold the August meeting via Zoom, the September meeting outside of the store property and the October meeting will be held at the Seeds of Grace building as before the pandemic hit.

Josh Farley Kitsap Sun reporter emailed the Commissioners on July 13, 2021 stating that they have heard that the Port of Illahee has been granted state funds to include projects that will create an 11-slip dock. He was wondering if he could chat with someone from the Port. Commissioner Aho said that he also received a call from Mr. Farley. Commissioner Aho provided him with a little bit of information. He explained that there was just so much to discuss and informed Mr. Farley that there was a Port meeting tonight and that he wouldn't be able to provide any more information until after the meeting. Commissioner Aho would like Mr. Farley to contact all three Commissioners. Commissioner Burton said that his concern is that the way the email was written it makes it sound like we are installing a new permanent moorage marina and it could give the public the wrong idea, since the moorage will





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remain transient with a maximum three-night stay. Commissioner Burton said that since he and Commissioner Buesch aren't as up to speed about the details of the waterfront project as much as Commissioner Aho is as he consistently talks with Mr. Piccone maybe Commissioner Aho and Mr. Piccone should be the ones talking to Mr. Farley. Commissioner Aho said that he would just tell Mr. Farley that the Commissioners have three different responsibilities with Commissioner Buesch responsible for the Port properties and Commissioner Burton responsible for the dock facilities. He said that one person can try to give an overall viewpoint, but a reporter really needs to talk to all three Commissioners. Commissioner Burton said that he would rather talk to him as a group, to make sure everything is clear. Commissioner Aho has some experience with Mr. Farley and knows him to be a very energetic reporter and once he has an idea, he will move forward with it how he sees fit. He will take whatever information the Commissioners give him and create a story. The more accurate the information the better. Commissioner Aho anticipates Mr. Farley calling the Commissioners tomorrow with an article to follow. Commissioner Aho said that he will talk a bit more to Mr. Farley and provide him with Mr. Piccone's contact information. Commissioner Burton thought that was best, so that Mr. Farley is provided the actual information not just the information taken from the grant application, but rather to maintain the recreational facility at Illahee and upgrade it to keep it from falling down, not to provide some new facility that is added to the total number of moorage facilities around Puget Sound. Commissioner Aho agreed and said that is why it is good for Mr. Farley to get input from all the

Commissioners. He added that a good reporter won't talk to just one person but rather talk to all involved and he is sure that is what Mr. Farley will do.

### **NEW BUSINESS**

Administrative – the Interlocal Agreement between the Ports of Illahee and Silverdale has not yet been generated.

### **PUBLIC COMMENT**

Roy Barton agreed with Commissioner Buesch regarding Illahee Day that with COVID19 the Port may want to start with the Health Department in case there are restrictions on having a food-oriented celebration. He thinks there may be some new regulations regarding potlucks and/or buffets so it could affect Illahee Day. Better to start there rather than spending much time on it then finding out there are restrictions.

Mr. Barton said that the Commissioners should keep in mind that the septic holding tank that is to be installed at the store is sure to be a big continual expense for a small business, such as a coffee shop, as every time the tank has to be pumped it could cost anywhere between \$500 and \$600.

Ms. Wood said that she would love to have an Illahee Day. She suggested an alternative be a street fair type event where the public can purchase their own food from vendors. She said that the community needs it and believes they would appreciate some sort of festival. Commissioner Aho liked the suggestion.



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A Kitsap All Ports meeting is scheduled for Monday, July 26<sup>th</sup> – meeting to start at 6:30PM – a pre-meeting barbeque is scheduled to begin at 5:00PM.

**EXECUTIVE SESSION** – None.

**ADJOURN**

*At 7:53PM Commissioner Burton moved to adjourn the meeting; second by Commissioner Buesch; approved unanimously.*

Approved:

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

PRELIMINARY DRAFT



**Draft minutes\*** for  
 Quarterly Kitsap All Ports Meeting  
 July 26, 2021 at the Port of Brownsville

In Attendance:

James Weaver	Bremerton
Jack Bailey	Brownsville
Shaun Nye	Brownsville
Joseph DaBell	Brownsville – staff
Carol Ehlinger	Brownsville - staff
Jerry Williams	Brownsville – staff
Mathew Messing	Brownsville – business owner
Sally Hass	Brownsville - citizen
Jim Aho	Illahee
Jon Buesch	Illahee
John Burton	Illahee
Steve Heacock	Kingston
Greg Englin	Kingston – staff
Robert Ballard	Manchester via ZOOM
Dan Fallstrom	Manchester
James Strobe	Manchester
Mark Singer	Poulsbo
Carol Tripp	Poulsbo – staff via ZOOM
Doug Kitchens	Silverdale
Caleb Reese	Silverdale
Ed Scholfield	Silverdale
Phil Best	Silverdale - attorney
Theresa Haaland	Silverdale, Tracyton, Illahee – staff
William Mooney	Tracyton
Jeff Reynolds	Waterman
Chris Herman	Washington Public Ports Assn
Gerry O'Keefe	Washington Public Ports Assn
Andrew	Kitsap PC/Wifi

After a potluck hosted by the Port of Brownsville, the meeting was called to order at 6:32PM by Port of Brownsville Commissioner Jack Bailey.

INTRODUCTIONS were made.

PLEDGE OF ALLEGIANCE – those in attendance stood for the pledge.

PUBLIC COMMENT

None

## INDIVIDUAL PORT UPDATES/MUTUAL ITEMS OF INTEREST

**Port of Silverdale** ([www.portofsilverdale.com](http://www.portofsilverdale.com)) – Commissioner Doug Kitchens explained that he is a new appointee of the Port of Silverdale as of May. Commissioner Caleb Reese reported that the Port of Silverdale was successful in two of the Recreation Conservation Office (RCO) grants – Aquatic Lands Enhancement Account (ALEA) grant and a Boating Facilities Program (BFP) grant. The development related to the grants should begin next year. The Port is also working on having a new Waterfront Activities Center designed by Patano Studio Architecture (PSA) and Leon Environmental in conjunction with moving the County's pumpstation 3 that currently sits on the waterfront. One issue the Port is having, along with many other Ports, is transient boats that are tied up to the Port's facility with no payment. Commissioner Ed Scholfield said that Silverdale needs to come up with policies and procedures on how to handle the non-paying vessels. The Port doesn't have a procedure for sending outstanding debts to collection as it has never been done. Commissioner Shaun Nye of Brownsville said that the Kitsap Ports need to communicate and work together. James Weaver, Director of Marine Facilities for the Port of Bremerton, said that they have policies and procedures in place. Commissioner Nye said that he will look into it further. Commissioner Scholfield said that after the last Kitsap All Ports meeting a Facebook page for the group was created as it was thought it would be a good avenue to alert each other of issues, similar to the Puget Sound Derelict Boat Facebook group. Commissioner Jack Bailey of Brownsville said that there was a large tug anchored out near Brownsville that recently left. Carol Ehlinger explained that the boat was moved to Port Orchard after the owners were confronted by the Kitsap County Sheriff's Department. Commissioner Jim Strode of Manchester questioned if it might be the tug that recently sunk in the waters off of Port Orchard. Commissioner Bailey suggested that if other Ports have a boater that was a problem and then left, it would be good to alert the other Ports. Commissioner Scholfield reported that Whaling Days was this past weekend and although the event was smaller in size it was well attended. He added that if any other Ports are planning events to expect crowds especially if the weather is nice. In general, the public seems anxious to get out and enjoy themselves.

**Port of Illahee** ([www.portofillahee.com](http://www.portofillahee.com)) – Commissioner John Burton explained that he recently had ask a boater, of the Native Driftwood, to move along as the boat was moored past the maximum night stay; come to find out the boat was having engine trouble. The Native Driftwood was at the Port of Brownsville prior to ending up at Illahee. Commissioner Scholfield reported that the Native Driftwood is now at Silverdale. Commissioner Nye said that it was anchored out off of Brownsville for years and suggested Silverdale contact Jerry at Brownsville for all the information related to that boat. Commissioner Burton said that he was in contact with the person that was on the boat while it was docked in Illahee. He

encouraged the individual to move along before being told that it was having engine problems. Commissioner Burton explained to the individual that according to the Port's published procedures a boat that is not seaworthy cannot be moored at the Port and that his boat was not seaworthy. It's a fine line because you don't want these boat owners to abandon the vessel at the facility. Commissioner Burton said that he recently learned that the Kitsap County Sheriff's Department just has three deputies on duty after hours, so they just don't have the manpower to respond to incidents, unless a gun is involved. Commissioner Strode said that beginning this Sunday there will even be less response as a new law is in effect. Commissioner Scholfield explained that he contacted a non-paying boater and later was accused of harassing him. He said that someone has to bite the bullet and take on the case. Commissioner Nye said that one issue is having a place to store derelict boats. Commissioner Scholfield explained that Silverdale did receive partial reimbursement from the Department of Natural Resources (DNR) through its Derelict Removal Program (DRP) for the boat that sunk at the dock the first of this year. Commissioner Bailey recalled the Port of Bremerton storing derelict boats out at their industrial park. Mr. Weaver replied that they do not do that anymore because it's not cost effective. In regards to the DNR DRP, the money is eaten up quickly usually by larger derelict vessels. Currently, there are eviction restrictions due to COVID19, which also includes transient moorage. Trespassing individuals that refuse to pay or follow Port rules was discussed. Commissioner William Mooney of Tracyton questioned if someone could be trespassed for anything other than breaking the law. Commissioner Nye said that Brownsville has trespassed individuals who refuse to follow the Port's rules. Mr. Weaver said that for Bremerton it has helped to have a close relationship with the City Police Departments as well as the Kitsap County Sheriff's Department. He said that he wasn't sure of a collective solution as there are just so many different jurisdictions throughout the County. Commissioner Scholfield questioned if Waste Management would take them. Commissioner Nye said that Waste Management no longer offers that service. Commissioner Scholfield said that the biggest issue is the hazardous material disposal. It took time and effort for Silverdale's contractor to find a company to pick-up the hazardous material in a timely fashion. Commissioner Nye said that if everybody works together on this issue, there is sure to be a solution. Commissioner Scholfield said storage fees are partially reimbursable through the DNR DRP, but again if the money is available. Commissioner Bailey said that Brownsville used to just put down a large tarp in the maintenance lot and haul the derelicts up there for dismantling and disposal into a Waste Management dumpster. It was the most inexpensive way to do it and used inhouse labor, keeping employees busy. There is a company by the name of Linden Salvage and Demolition ([- Linden Salvage & Demolition](#)) out near Belfair. Commissioner Caleb Reese explained that they have dumpsters and transfer trucks. The owner is Jesse Linden ((360) 731-5931).

Commissioner Bailey said that we all have to lobby legislatures to get more money put in the DNR DRP.

Commissioner Jim Aho reported that the Port of Illahee applied for three RCO grants (ALEA, BFP, and Washington Wildlife and Recreation Program (WWRP) – Water Access) and was successful two of the three (ALEA and BFP) totaling approximately 1.3 million dollars in grant funding. The Port will have to come up with \$611,000 in matching funds, which is challenging for a small Port. A portion of the project will be to replace the deteriorating pilings and floats. Commissioner Bailey said that replacing the pilings could be used towards mitigation.

Commissioner Aho reported on the Illahee Store property. The Port had scored number sixteen on the Pollution Liability Insurance Agency's (PLIA) project list. In talking with PLIA personnel Commissioner Aho was told PLIA is currently working on project number fourteen and if they don't get to Illahee this year, it will be scheduled for 2022. Commissioner Bailey asked about the size of the contamination. Commissioner Aho informed him that it does go into the County right-of-way but, thankfully, not under the road.

**Port of Poulsbo** ([www.portofpoulsbo.com](http://www.portofpoulsbo.com)) – Commissioner Mark Singer reported that Poulsbo is busy. The permanent and guest moorage facilities are full. There are thirty-seven vessels anchored out in Liberty Bay. Several vagrants dinghy in and tie up to the guest moorage and use the Ports facilities. Some have jumped the gate to get to where they want. The Port has worked with the Poulsbo Police Department in some instances. They seem to have the same issues with some derelict boaters as previously discussed. They were able to dispose of two boats and it cost the Port approximately \$3,000. A different issue they have had is with some boat owners that seem to have money acting very arrogant and disrespectful to Port staff. Commissioner Singer doesn't really consider these individuals as true boaters. Some of these individuals have been asked not to return to Poulsbo. The new boat launch should be opened within the next few weeks. This is a big asset to the city. The big joke around Poulsbo is that the Port has been accused of causing the parking problem in town. The funny thing is that no one has noticed any vehicles being towed in by boaters. The city seems to be doing very well as it is packed every day from 7:00AM through 10:00PM. Overall, the Port is doing very well, although still awaiting permits for the breakwater project. Commissioner Singer took a moment of silence on behalf of the Army Corps of Engineers (ACE) and the National Marine Fisheries (NMF). The Port has reached out to US Representative Derek Kilmer's office ([home.house.gov](http://home.house.gov)) to no avail. Commissioner Singer said he found it interesting that once the Port shut down the old boat launch by placing a cement block in front of it, the City of Poulsbo issued the permit the following day. He said it is a ridiculous way the government works as they are supposed to be serving us. That is what they get paid to do, yet it's not happening. Commissioner Singer recognized that the Washington Public Ports Association (WPPA) is striving for the Ports, but more

needs to be done. According to Carol Tripp, of the Port of Poulsbo, there are thirty-nine projects on hold awaiting ACE permits. Ms. Tripp said that Poulsbo has 1.1 million dollars invested thus far in the breakwater project and has been waiting two years for the necessary ACE permit to be issued. She wished the Port of Illahee the best for their upcoming project and suggested they double their timeline due to permitting delays. It's rather ironic because the current breakwater contains nine-hundred creosote pilings, which would be removed within the project and would greatly benefit the environment. Commissioner Singer explained that the water in areas of the marina isn't the cleanest because the current breakwater blocks the flow, which will also be alleviated with the design of the new breakwater. Gerry O'Keefe, Senior Director of Environmental Policy with the WPPA, said that he has talked to people from here to Washington, DC, but there has been no progress. The WPPA has been working really hard for the Ports and is also frustrated. He urged Commissioners to contact Representative Kilmer's office ([home \(house.gov\)](http://home.house.gov)) at least every week. The fact that there are nine-hundred creosote pilings awaiting to be removed is ridiculous and he questions if Representative Kilmer actually knows anything about it. He asked that the Ports encourage their constituents to call Representative Kilmer's office over and over and over. It shouldn't be like this, but something has to be done and we have to become the squeaky wheel. Commissioner Mooney suggested a letter be drafted to Representative Kilmer signed by all of the Kitsap Port Commissioners inviting him to attend a meeting where these issues can be aired. Mr. O'Keefe said that he would like to collect from each of the Ports, information about projects that are being held up due to current policy. Currently, the ACE and NMF are in disagreement with the interpretation of the law and as Commissioner Bailey put it, the Ports are caught in the middle. It was thought that the Port of Allyn Executive Director, Lary Coppola, was working on drafting a letter. Mr. O'Keefe said that he plans to draft a letter outlining the projects that are being held up in the cross hairs due to the two agencies not agreeing on the law. Apparently, Chad with the Port of Anacortes has started a date ticker on how many days they have been paused – it is thought to be over 900 days now. Commissioner Mooney said that once all the Commissioners sign the letter, everyone is held accountable and more eager to hear from Representative Kilmer's office. Commissioner Dan Fallstrom suggested everyone start with Kilmer's Bremerton office with all of the contact information being available via the internet ([home \(house.gov\)](http://home.house.gov)). Commissioner Singer said that Poulsbo is also improving one of their floats by installing a small kayak rack for public storage, thankfully no permits are required.

Commissioner Bailey asked Port of Poulsbo representatives about the parking permits they issue to their liveaboard tenants. Commissioner Singer said that they have different colored passes for liveaboard tenants and guests. Ms. Tripp has had to tow several vehicles recently. Commissioner Singer said that the cost to retrieve your vehicle from the towing company is \$496. He explained that he



knows this from experience as another Port Commissioner erroneously had his car towed. Commissioner Bailey asked if they print a barcode on the permit to keep the individuals' information private. Ms. Tripp explained that they are prenumbered with a separate spreadsheet held in the office that lists the information of the person that was issued the permit. The Commissioners did decide to include the slip numbers on the permits.

**Port of Kingston** ([www.portofkingston.org](http://www.portofkingston.org)) – Greg Englin, Executive Director of the Port of Kingston, reported that the marina is doing well in spite of the pandemic. In fact, there has been an uptick in boating numbers. It's nice to have a resilient business in these times. The Port did take a huge hit in the decrease in commuter parking. This is significant to the Port because parking is the real "cash cow". Kingston also issues parking permits to liveaboard tenants; one permit per slip. They keep a list in the office of the permitted vehicles and license plate numbers. Mr. Englin said that fuel sales remain strong despite the rising costs. Commissioner Steve Heacock explained that about two and a half years ago the Port changed its fueling process as there were some small fuel spills generally caused by boaters. With the pandemic shutdowns lifting and people going back to work, the commuter parking is on the rise. The Port of Kingston continues the partnership with Kitsap County, Washington State Department of Transportation (WDOT), Washington State Ferries (WSF) and Kitsap Transit on the Lindvog Remote Ferry Holding Project. The next closed meeting is scheduled for August 5<sup>th</sup>, where priorities will be set and the lead agency will be determined. Commissioner Heacock explained that the Kingston-Edmonds ferry route is the second busiest terminal in the state. The traffic, primarily from ferry-goers, backs up and prohibits local traffic from being able to access the downtown businesses in Kingston. Besides constructing overflow holding lanes, there is discussion about the possibility of realigning State Route 104 directly to the ferry terminal. Mr. Englin explained that the Port is also working on an interim three-to-five-year comprehensive plan. The first step has been to look into the zoning of certain Port-owned properties. They intend to pursue rezoning of the park property. He explained that in 2016 the County had discussed including a Port-overlay to zoning for Port-owned properties. Commissioner Bailey said that he was involved with that along with other Port representatives, but nothing came of it. Mr. Englin explained that it is still on the County's radar with modified zoning use tables. Mr. Englin plans to write up a summary to provide to the others. He said that these use tables are very important to all of us and urged Ports to collectively support this even if not every Port is directly affected with it, as it will generate positive revenue streams which can affect the entire County. He explained that the County has changed the use tables to include almost like a rezone for marina related resources. He credited the County because they did go out of their way to draft this marina-related use. He would like for the Ports to work together on getting a critique going and approach the County from there. He will get

something out to all of the Ports for review. Entering into an Interlocal Agreement (IA) was discussed. Commissioner Bailey said that a sample IA can be found on the WPPA's website ([Washington Public Ports Association \(washingtonports.org\)](http://WashingtonPublicPortsAssociation(washingtonports.org))) It's something he has been asking to get on Brownsville's agenda.

Mr. O'Keefe said that he is buying dinner for the Port district that makes the most calls into Representative Kilmer's office ([home \(house.gov\)](http://home.house.gov)).

The meeting took at temporary break at 7:45PM.

**Port of Manchester** ([www.portofmanchester.com](http://www.portofmanchester.com)) – Commissioner James Strode told of the continued saga of the sinking boat that the Coast Guard tied up to the Manchester dock. About six weeks ago Commissioner Strode received a call at 9:00AM that the high tides pushed the sunken boat under the dock and it was lifting it. Commissioner Strode rushed down to the dock. As he was contemplating what to do next, he turned around on the dock and Tim Knapp of TIKAR Services was heading his way. He was in shock because he hadn't seen Tim in many years, but boy was he a sight for sore eyes. Tim said to Commissioner Strode that it looked like he could use a little help. Commissioner Strode welcomed it. TIKAR initially tried to pump out the boat, but had to come back the next day at low tide to continue their efforts. The next day they were busy patching every possible hole with plywood. Tim ended up pulling the boat with a rope over his shoulder to the boat ramp – keep in mind this was a thirty-two-foot boat with two large motors. They attempted to get it off the boat ramp with a Genie forklift, but it almost flipped. At this point it was nearing 10:00PM and Commissioner Strode was worn out. Tim noticed and asked Commissioner Strode where he wanted the boat to be placed. Commissioner Strode instructed Tim where he would like it placed. Tim then encouraged Commissioner Strode to go home and get some rest. From there between the Genie forklift and Tim's one-ton dolly the boat was found the next morning in the place Commissioner Strode had requested. The Port of Manchester now owns a twenty-five-foot trailer. Commissioner Bailey said that TIKAR has done some cement work for Brownsville and they did a really good job with it. Commissioner Strode said that TIKAR crunched up the boat and got it all removed from the Port. It cost the Port about \$10,000.

Commissioner Dan Fallstrom was asked if there is anything legislatively for the Ports to be made aware of. Commissioner Fallstrom said not necessarily, but suggested the Ports pursue the salmon and orca whale enthusiasts, regarding the derelict boat issues, in an effort to get some additional funding added to the DNR DRP. He said all they can say is no – that's basically his motto in Olympia. Commissioner Bailey told Commissioner Fallstrom that the Ports appreciate all he has done by lobbying for the Ports through the years. Commissioner Fallstrom said that there have been times that he stops in with the WPPA, but

sometimes he just meets directly with the legislators. He likened it all to a big card game with high stakes. Commissioner Fallstrom has decided not to run for re-election this November – he will be missed!

**Port of Bremerton** ([www.portofbremerton.org](http://www.portofbremerton.org)) - James Weaver, Director of Marine Facilities, said that the Port is busy similar to the rest. Summer has created really robust revenues. Both marinas are at approximately ninety-seven percent capacity. Mr. Weaver explained that the Port continues its efforts with the Port Orchard Marina Breakwater Project. They also continue to keep a close eye on Poulsbo's efforts and he thanked the Port of Poulsbo for trail blazing the way with regards to the permits. Bremerton will be submitting permit applications in the fall. They were successful in receiving an RCO Boating Infrastructure Grant (BIG) in the amount of 1.2 million dollars, which is great but the project is estimated to cost 15 million dollars. They are looking into infrastructure money from the federal government. The Port has been trying to hire entry-level positions, but no one seems to want to work. Mr. Weaver said in all his years he hasn't seen anything like this. The housing condo parking garage that will accommodate parking for Port tenants is still being constructed. Currently the marina tenants parking stalls are sprawled out all over the downtown Bremerton area. Mr. Weaver is looking forward to the completion of the parking lot as he likened managing the current tenant parking situation to herding cats all around town. Bremerton is also installing a kayak rack to one of the docks similar to Poulsbo. They too have noticed that a few of the larger vessel owners have recently been challenging to deal with, although they are not sent away as Bremerton will accommodate their needs for fuel. They currently have a two-year wait list for boats over 40' and an eight-month wait list for 30' boats. Mr. Weaver has noticed that boats used to be moored more seasonally, but now boats are moored all year because the owners don't want to risk losing their spots. He thanked the Port of Kingston for their hard work on determining the updated rates, because of the comparison data provided, Bremerton based its rate increases accordingly. They contract with Safe Security ([Security Guard Service in Kitsap County | SAFE Security](#)), which has proved beneficial. Guards have helped save an individual who fell into the water, deal with domestic disputes and the homeless situation. It is a helpful interim to assist the police. They basically observe and report. The reports are used for documentation, litigation and trespassing, as needed. Their services have been a lifesaver for the Port. Other Port representatives concurred (Brownsville, Manchester, Silverdale). Commissioner Bailey said that the Safe Security supervisor is generally on duty as well and he randomly will check on the guards. Guards that are found to not be getting out of the vehicles and checking on things are quickly gone. It has been well worth the money to contract with Safe Security. Mr. Weaver said that Bremerton used the Port of Anacortes rules and regulations as a basis to update its own. He said they would be willing to share with anyone interested.

**Port of Tracyton** ([www.portoftracyton.com](http://www.portoftracyton.com)) – Commissioner Mooney explained that the Port of Tracyton is the smallest Port by landmass in the State and the lowest taxing district. County property is on either side of the area at the boat launch. Commissioner Mooney has called the County to have abandoned vehicles removed. The Sheriff tags the vehicles and they are towed promptly. He recently reported an abandoned boat trailer that had the VIN scrapped off and was in bad shape. Commissioner Mooney was told that the owners of abandoned vehicles get fined for littering. There have been day-campers down near the boat ramp on the County right-of-way lately. Commissioner Mooney explained that just prior to leaving for tonight's meeting he witnessed a boater attempting to launch his boat from the boat ramp and somehow the boater drove his truck off the boat ramp concrete slab way out and the truck was in the water up to its radiator. An individual known to Commissioner Mooney was in the area with his ATV and offered to help the boater pull the truck back up onto the boat ramp. Commissioner Mooney said that in reading the minutes of the last All Ports meeting, he is content with the Port of Tracyton having only the boat ramp. Derelict vessels being likened to as the RV's of the sea scares the crap out of him as the Port wouldn't be able to afford to pay for the removal of a derelict vessel let alone many. Commissioner Fallstrom urged him to join the club. Commissioner Mooney explained that he pays just \$13.00 to the Port from his property taxes. At that rate, the Port would quickly run out of money. Anytime he is approached about why the Port doesn't pursue constructing a pier he explains that the Port cannot afford it, let alone maintain it. Commissioner Strode told Commissioner Mooney that he isn't taking into consideration the ten-year timeline it will take to be issued an ACE permit, by that time the Port's taxes are sure to increase. Commissioner Mooney reported that once COVID19 hit, he made the decision to remove the portable restroom near the boat ramp. It has recently been restored. Commissioner Bailey said that the Port of Tracyton might at some point have to ask the citizens to pay more so that Port facilities can be increased. The Port did install a gazebo/pavilion in its vacant lot a block up from the boat ramp. Unfortunately, there have already been complaints about individuals hanging out in there smoking marijuana.

Chris Herman of the WPPA explained that it's time to reserve rooms at the Enzian Inn ([Enzian Inn](#)) in Leavenworth for the WPPA sponsored 2021 Small Ports Seminar scheduled for October 21<sup>st</sup> through the 22<sup>nd</sup>. It was explained that the Enzian is already filled up and having people make reservations at the Linderhof Inn ([LINDERHOF INN – Leavenworth, WA](#)). Look for registration to open soon for the Small Ports Seminar on the WPPA site ([Upcoming Events – Washington Public Ports Association \(washingtonports.org\)](#)).

Mr. O'Keefe reported that the WPPA sponsored 2021 Environmental Seminar at the Alderbrook Inn ([Alderbrook Resort & Spa - Washington State Luxury Resort](#)) is scheduled for September 23<sup>rd</sup> through the 24<sup>th</sup>. He expects a robust crowd.

Look for registration for the Environmental Seminar to open this week on the WPPA's website ([Upcoming Events — Washington Public Ports Association \(washingtonports.org\)](http://www.washingtonports.org)).

**Port of Waterman** – ([www.portofwaterman.com](http://www.portofwaterman.com)) Commissioner Jeff Reynolds said that the biggest problem at the moment the Port of Waterman is dealing with is the trash left behind from crabbers. They did have an interesting event with a sailboat that was adrift and smashing against the pier during a storm. Port Commissioners were on the scene and holding the boat away from the pier for about an hour before the Coast Guard showed up and towed it to a channel marker. There were about four other sailboats out in the water that day and by the next morning all were gone. The security cameras that were installed at Waterman about a year ago have proved beneficial as there haven't been any vandalism within that time.

Commissioner Bailey noted that Joe DaBell helped out during tonight's meeting by making the ZOOM option available – thanks Joe!

The meeting adjourned at 8:20PM.

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Commissioner

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Commissioner

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Commissioner





**Project Sponsor:** Port of Illahee  
**Project Title:** Port of Illahee Waterfront Access Improvements

**Project Number:** 20-1711D  
**Approval Date:** 06/30/2021

**PARTIES OF THE AGREEMENT**

This Recreation and Conservation Office Grant Agreement (Agreement) is entered into between the State of Washington by and through the Recreation and Conservation Funding Board (RCFB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and Port of Illahee (Sponsor, and primary Sponsor), PO Box 2357, Bremerton, WA 98310, and shall be binding on the agents and all persons acting by or through the parties.

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

Prior to and during the Period of Performance, per the Applicant Resolution/Authorizations submitted by all Sponsors (and on file with the RCO), the identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project identified above, including but not limited to, full authority to: (1) sign a grant application for grant assistance, (2) enter into this Agreement on behalf of the Sponsor(s), including indemnification, as provided therein, (3) enter any amendments thereto on behalf of Sponsor(s), and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all Sponsors, unless otherwise allowed in the AMENDMENTS TO AGREEMENT Section.

- A. During the Period of Performance, in order for a Sponsor to change its Authorized Representative/Agent as identified on the original signed Applicant Resolution/Authorization the Sponsor must provide the RCO a new Applicant Resolution/Authorization signed by its governing body or a written delegation of authority to sign in lieu of originally authorized Representative/Agency(s). Unless a new Applicant Resolution/Authorization has been provided, the RCO shall proceed on the basis that the person who is listed as the Authorized Representative in the last Resolution/Authorization that RCO has received is the person with authority to bind the Sponsor to the Agreement (including any amendments thereto) and decisions related to implementation of the Agreement.
- B. Amendments After the Period of Performance. RCO reserves the right to request and Sponsor has the obligation to provide, authorizations and documents that demonstrate any signatory to an amendment has the authority to legally bind the Sponsor as described in the above Sections.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (See PROJECT REIMBURSEMENTS Section).

**PURPOSE OF AGREEMENT**

This Agreement sets out the terms and conditions by which a grant is made from the State Building Construction Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO).

**DESCRIPTION OF PROJECT**

The Port of Illahee will use this grant to renovate waterfront access to existing Port facilities at the Illahee Dock. Specifically, this will include a new fishing dock, public pier, beach and park areas, and small craft launch. Additionally, the Port will construct a new vault restroom, view points, parking and ADA compliant pathways throughout the site. The primary recreational opportunities provided by this project are non-motorized boating and fishing.

**PERIOD OF PERFORMANCE**

The period of performance begins on July 19, 2021 (project start date) and ends on May 1, 2024 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.

The RCO reserves the right to summarily dismiss any request to amend this Agreement if not made at least 60 days before the project end date.

**STANDARD TERMS AND CONDITIONS INCORPORATED**

The Standard Terms and Conditions of the Recreation and Conservation Office attached hereto are incorporated by reference as part of this Agreement.

**LONG-TERM OBLIGATIONS**

For this development project, the Sponsor's long-term obligations for the project area shall be in perpetuity, beginning at project completion, unless otherwise identified in the Agreement or as approved by the funding board or RCO.

**PROJECT FUNDING**

The total grant award provided for this project shall not exceed \$500,000.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
<b>RCFB - Aquatic Lands Enhancement Acct</b>	61.58%	\$500,000.00	State
<b>Project Sponsor</b>	38.42%	\$312,000.00	
<b>Total Project Cost</b>	100.00%	\$812,000.00	

**RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS**

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved and/or amended as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with the Agreement, such information shall not be used to vary the terms of the Agreement, unless the terms in the Agreement are shown to be subject to an unintended error or omission. "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions.

**AMENDMENTS TO AGREEMENT**

Except as provided herein, no amendment (including without limitation, deletions) of this Agreement will be effective unless set forth in writing signed by all parties. Exception: extensions of the Period of Performance and minor scope adjustments need only be signed by RCO's director or designee and consented to in writing (including email) by the Sponsor's Authorized Representative/Agent or Sponsor's designated point of contact for the implementation of the Agreement (who may be a person other than the Authorized Agent/Representative), unless otherwise provided for in an amendment. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so.

Unless otherwise expressly stated in an amendment, any amendment to this Agreement shall be deemed to include all current federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on the RCO website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone. However, any such amendment, unless expressly stated, shall not extend or reduce the long-term obligation term.

**COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES**

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, Exhibits, and any applicable federal program and accounting rules effective as of the date of this Agreement or as of the effective date of an amendment, unless otherwise provided in the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone unless otherwise expressly stated in the amendment.

For the purpose of this Agreement, WAC Title 286, RCFB policies shall apply as terms of this Agreement.

For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Aquatic Lands Enhancement Account (ALEA) - Manual 21
- Development Projects - Manual 4
- Long Term Obligations - Manual 7
- Reimbursements - Manual 8



**SPECIAL CONDITIONS**

1. Cultural Resources, Federal Nexus (Federal Permit)

This project appears to be subject to the National Historic Preservation Act, Section 106, and therefore exempt from Governor's Executive Order 21-02. In order for this project to be exempt from EO 21-02, the Section 106 Area of Potential Effect (APE) must be inclusive of the entire RCO funded project area and cover all funded actions. The sponsor is encouraged to work with the federal permitting agency to align the Section 106 APE with the scope of work subject to this project agreement. If the APE does not include all actions subject to this project agreement, promptly notify the RCO grant manager, as this will require RCO to initiate cultural resources consultation following EO 21-02 for those activities not included in the federal APE. Before initiating any ground disturbing activities as described in this agreement, the Sponsor must submit to RCO evidence of completion of the appropriate cultural resource review process and receive from RCO a Notice to Proceed. RCO will withhold reimbursement of development or restoration expenditures until this requirement is met. For acquisition projects, final payment will be withheld until evidence of cultural resources review is provided. Construction started without a Notice to Proceed will be considered a breach of contract. All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation and Section 106 of the National Historic Preservation Act.

**AGREEMENT CONTACTS**

The parties will provide all written communications and notices under this Agreement to either or both the mail address and/or the email address listed below:

**Sponsor Project Contact**

Jim Aho  
Port Commissioner  
5940 Illahee Rd  
Bremerton, WA 98311  
illaheeporthree@gmail.com

**RCO Contact**

Kim Sellers  
Natural Resources Building  
PO Box 40917  
Olympia, WA 98504-0917  
kim.sellers@rcowa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Unless otherwise provided for in this Agreement, decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

**ENTIRE AGREEMENT**

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

**EFFECTIVE DATE**

Unless otherwise provided for in this Agreement, this Agreement, for Project 20-1711, shall become effective and binding on the date signed by both the sponsor and the RCO's authorized representative, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE Section are allowed only when this Agreement is fully executed and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE RCO GRANT AGREEMENT. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

**Port of Illahee**

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

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

Name (printed): \_\_\_\_\_

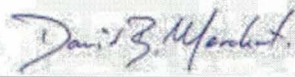
Title: \_\_\_\_\_

**State of Washington Recreation and Conservation Office**  
**On behalf of the Recreation and Conservation Funding Board (RCFB or funding board)**

**By:** \_\_\_\_\_  
For Megan Duffy  
Director  
Recreation and Conservation Office

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

Pre-approved as to form:

**By:**  \_\_\_\_\_  
Assistant Attorney General

**Date:** \_\_\_\_\_ 06/01/2021

**Project Sponsor:** Port of Illahee  
**Project Title:** Port of Illahee Waterfront Access Improvements

**Project Number:** 20-1711D  
**Approval Date:** 06/30/2021

## Eligible Scope Activities

### ELIGIBLE SCOPE ACTIVITIES

#### Development Metrics

##### Worksite #1, Port of Illahee

##### Buildings and Structures

###### Construct / install restroom

Number of restrooms: 1 new, 0 renovated  
Select the restroom type : Restroom, Vault toilets

##### General Site Improvements

###### Develop circulation paths or access routes

Enter length of circulation paths and routes by surface type:  
Concrete 170  
Lighting provided (yes/no): No

###### Develop viewpoint

Number of designated viewpoints: 4 new, 0 renovated  
Select the viewpoint structures: Benches/seating

###### Install pilings

Select the structures supported by piling: Boarding float, Fishing facility

###### Install signs/kiosk

Number of kiosks: 0 new, 0 renovated  
Number of interpretive signs/displays: 2 new, 0 renovated  
Number of permanent entrance signs: 1 new, 0 renovated  
Project involves installation of informational signs (yes/no): Yes

###### Landscaping improvements

Acres of landscaped area : 0.16  
Select the landscape features: Grass/turf, Groundcover, Other, Trees/shrubs

##### Parking and Roads

###### Parking development

Number of vehicle parking stalls: 18 new, 0 renovated  
Number of vehicle with trailer parking stalls: 0 new, 0 renovated  
Number of accessible parking stalls:  
Vehicle 1  
Select the parking surfaces : Asphalt  
Select the parking enhancements: Catch basins, Staging area, Wheel stops

###### Roads/bridges development

Miles of road constructed: 0.07  
Number of road bridges: 0 new, 0 renovated  
Select the road or bridge amenities: None

##### Site Preparation

###### General site preparation

##### Utilities

###### Install stormwater system

Select the stormwater utilities:

Catch basins, Stormwater line

### **Water Access**

#### **Develop access point**

Number of designated water access points:

1

Describe the designated water access point (stairs, ramp, etc.):

improvements to existing beach access stairs

#### **Develop fishing facilities**

Number of fishing facilities:

1 new, 0 renovated

Select the fishing facilities:

Float

Number of fish cleaning stations:

0 new, 0 renovated

#### **Develop hand launch facilities**

Number of hand launches:

0 new, 1 renovated

Select the type of hand launch facility:

Float, Hard-surface access

#### **Gangway installation**

Number of gangways:

1 new, 0 renovated

Linear feet of gangway(s):

44

Select the gangway uses :

Boarding float, Fishing facility

### **Cultural Resources**

#### **Cultural resources**

### **Permits**

#### **Obtain permits**

### **Architectural & Engineering**

#### **Architectural & Engineering (A&E)**

**Project Sponsor:** Port of Illahee  
**Project Title:** Port of Illahee Waterfront Access Improvements

**Project Number:** 20-1711D  
**Approval Date:** 06/30/2021

## Project Milestones

### PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
	Project Start	07/19/2021	
	60% Plans to RCO	10/01/2021	
	Progress Report Due	11/01/2021	
	Applied for Permits	02/01/2022	
	Cultural Resources Complete	04/01/2022	Federal Nexus: Documentation of cultural resources compliance must be submitted to your grants manager, see Special Condition 1.
	Bid Awarded/Contractor Hired	06/01/2022	
	All Bid Docs/Plans to RCO	06/01/2022	
	RFP Complete/Consultant Hired	06/01/2022	
	Annual Project Billing Due	07/31/2022	
	Progress Report Due	07/31/2022	
	Construction Started	08/01/2022	
	Progress Report Due	11/01/2022	
	50% Construction Complete	02/01/2023	
	RCO Interim Inspection	05/01/2023	
	Annual Project Billing Due	07/31/2023	
	Progress Report Due	07/31/2023	
	Progress Report Due	11/01/2023	
	90% Construction Complete	11/01/2023	
	Construction Complete	01/01/2024	
	Final Billing Due	03/01/2024	
	RCO Final Inspection	03/01/2024	
	Funding Acknowl Sign Posted	03/01/2024	
	Final Report Due	03/04/2024	
	Agreement End Date	05/01/2024	

**Project Sponsor:** Port of Illahee  
**Project Title:** Port of Illahee Waterfront Access Improvements

**Project Number:** 20-1711D  
**Approval Date:** 06/30/2021

## Standard Terms and Conditions of the Recreation and Conservation Office

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## STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This document sets forth the Standard Terms and Conditions of the Recreation and Conservation Office as of 07/16/2021.

## CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

**Agreement, terms of the Agreement, or project agreement** – The document entitled “RCO GRANT AGREEMENT” accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the RCO Grant Agreement, all exhibits, attachments, addendums, amendments, and applicable manuals, and any intergovernmental agreements, and/or other documents that are incorporated into the Agreement subject to any limitations on their effect under this Agreement.

**applicable manual(s), manual** – A manual designated in this Agreement to apply as terms of this Agreement, subject (if applicable) to substitution of the “RCO director” for the term “board” in those manuals where the project is not approved by or funded by the referenced board, or a predecessor to the board.

**applicable WAC(s)** – Designated chapters or provisions of the Washington Administrative Code that apply by their terms to the type of grant in question or are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the “RCO director” for the term “board” or “agency” in those cases where the RCO has contracted to or been delegated to administer the grant program in question.

**applicant** – Any party, prior to becoming a Sponsor, who meets the qualifying standards/eligibility requirements for the grant application or request for funds in question.

**application** – The documents and other materials that an applicant submits to the RCO to support the applicant’s request for grant funds; this includes materials required for the “Application” in the RCO’s automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

**Authorized Representative/Agent** – A Sponsor’s agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor’s signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

**C.F.R.** – Code of Federal Regulations

**completed project or project completion** – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been delivered to and paid by RCO.
- Documents affecting property rights (including RCO’s as may apply) and any applicable notice of grant, have been recorded (as may apply).

**contractor** – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

**conversion** – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.

**Cultural Resources** – Archaeological or historic archaeological sites, historic buildings/structures, and cultural or sacred places.

**development project** – A project that results in the construction of, or work resulting in, new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources. A development project may also involve activities that redevelop or renovate an existing facility, and these may occur exclusively in the project or in combination with new construction. For projects in the Boating Facilities Program, the term "development project" includes all of the above and may also include those activities that are defined as maintenance in 50 C.F.R. 86.

**director** – The chief executive officer of the Recreation and Conservation Office or that person's designee.

**effective date** – The date when the signatures of all parties to this agreement are present in the agreement.

**equipment** – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or \$5,000 (2 C.F.R. § 200.33 (2013)).

**funding board or board** – The Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board. Or both as may apply.

**Funding Entity** – the entity that approves the project that is the subject to this Agreement.

**grant program** – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

**long-term compliance period** – The term of years, beginning on the end date of the agreement, when long-term obligations exist for the Sponsor. The start date and end date of the compliance period may also be prescribed by RCO per the Agreement.

**long-term obligations** – Sponsor's obligations after the project end date, as specified in the Agreement and manuals and other exhibits as may apply.

**landowner agreement** – An agreement that is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor.

**match or matching share** – The portion of the total project cost provided by the Sponsor.

**milestone** – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

**Office** – Means the Recreation and Conservation Office or RCO.

**pass-through entity** – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C. F. R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

**period of performance** – The period beginning on the project start date and ending on the project end date.

**pre-agreement cost** – A project cost incurred before the period of performance.

**primary Sponsor** – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. Administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

**project** – The undertaking that is funded by this Agreement either in whole or in part with funds administered by RCO.

**project area** - A geographic area that delineates a grant assisted site which is subject to project agreement requirements.

**project completion or completed project** – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been delivered to and paid by RCO.



- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

**project cost** – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (see also 2 C.F.R. § 200.83 (2013) for federally funded projects).

**project end date** – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

**project start date** – The specific date identified in the Agreement on which the period of performance starts.

**RCFB** – Recreation and Conservation Funding Board

**RCO** – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

**RCW** – Revised Code of Washington

**reimbursement** – RCO's payment of funds from eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

**renovation project** – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

**secondary Sponsor** – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

**Sponsor** – A Sponsor is an organization that is listed in and has signed this Agreement.

**Sponsor Authorized Representative/Agent** – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

**subaward** – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. § 200.92 (2013). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in the Project Funding Section.

**subrecipient** – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

**tribal consultation** – Outreach, and consultation with one or more federally recognized tribes (or a partnership or coalition or consortium of such tribes, or a private tribal enterprise) whose rights will or may be significantly affected by the proposed project. This includes sharing with potentially-affected tribes the scope of work in the grant and potential impacts to natural areas, natural resources, and the built environment by the project. It also includes responding to any tribal request from such tribes and considering tribal recommendations for project implementation which may include not proceeding with parts of the project, altering the project concept and design, or relocating the project or not implementing the project, all of which RCO shall have the final approval of.

**useful service life** – Period during which a built asset, equipment, or fixture is expected to be useable for the purpose it was acquired, installed, developed, and/or renovated, or restored per this Agreement.

**WAC** – Washington Administrative Code.

## **PERFORMANCE BY THE SPONSOR**

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the RCO (to include any RCO approved changes or amendments thereto). All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

## **ASSIGNMENT**

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written approval of the RCO.

## **RESPONSIBILITY FOR PROJECT**

While RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of the Sponsor. The RCO and Funding Entity (if different from the RCO) undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project has more than one Sponsor, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO, its employees, assigns, consultants and contractors, and members of any funding board or advisory committee or other RCO grant review individual or body, have no responsibility for reviewing, approving, overseeing or supervising design, construction, or safety of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO, its employees, assigns, consultants and contractors, and any funding board or advisory committee or other RCO grant review individual or body will act only to confirm at a general, lay person, and nontechnical level, solely for the purpose of project eligibility and payment and not for safety or suitability, that the project apparently is proceeding or has been completed as per the Agreement.

## **INDEMNIFICATION**

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents or employees, and (b) the State, or its employees or agents the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or its agents, or employees.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51. Sponsor's waiver of immunity under this provision extends only to claims against Sponsor by Indemnitee RCO, and does not include, or extend to, any claims by Sponsor's employees directly against Sponsor.

Sponsor shall ensure that any agreement relating to this project involving any contractors, subcontractors and/or vendors of any tier shall require that the contracting entity indemnify, defend, waive RCW 51 immunity, and otherwise protect the State as provided herein as if it were the Sponsor. This shall not apply to a contractor or subcontractor is solely donating its services to the project without compensation or other substantial consideration.

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not

apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

#### **INDEPENDENT CAPACITY OF THE SPONSOR**

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the RCO or Funding Entity. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of the RCO or the Funding Entity, or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

#### **CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52; or any similar statute involving the Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided herein, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **COMPLIANCE WITH APPLICABLE LAW**

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

- A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Employment Act (if applicable). In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project: "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."
- B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.
  - 1) Pursuant to RCW 39.12.040(1)(a), all contractors and subcontractors shall submit to Sponsor a statement of intent to pay prevailing wages if the need to pay prevailing wages is required by law. If a contractor or subcontractor intends to pay other than prevailing wages, it must provide the Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, the Sponsor is not required to investigate a statement regarding prevailing wage provided by a contractor or subcontractor.
  - 2) Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130). If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community

service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.

- D. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature. No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.
- E. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

#### ARCHAEOLOGICAL AND CULTURAL RESOURCES

- A. **Project Review.** RCO facilitates the review of projects for potential impacts to archaeology and cultural resources, except as those listed below. The Sponsor shall follow RCO guidance and directives to assist it with such review as may apply.
  - 1) **Projects occurring on State/Federal Lands:** Archaeological and cultural resources compliance for projects occurring on State or Federal Agency owned or managed lands, will be the responsibility of the respective agency, regardless of sponsoring entity type. Prior to ground disturbing work or alteration of a potentially historic or culturally significant structure, or release of final payments on an acquisition, the Sponsor must provide RCO all documentation acknowledging and demonstrating that the applicable archaeological and cultural resources responsibilities of such state or federal landowner or manager has been conducted.
- B. **Termination.** RCO retains the right to terminate a project due to anticipated or actual impacts to archaeology and cultural resources.
- C. **Notice To Proceed.** No work shall commence in the project area until RCO has provided a notice of cultural resources completion. RCO may require on-site monitoring for impacts to archaeology and cultural resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid impacts to archaeology and cultural resource impacts or concerns. All cultural resources requirements for non ground disturbing projects (such as acquisition or planning projects) must be met prior to final reimbursement.
- D. **Compliance and Indemnification.** At all times, the Sponsor shall take reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic resources in the project area, and comply with any RCO direction for such minimization and mitigation. All federal or state cultural resources requirements under Governor's Executive Order 21-02 and the National Historic Preservation Act, and the State Environmental Policy Act and the National Environmental Policy Act, and any local laws that may apply, must be completed prior to the start of any work on the project site. The Sponsor must agree to indemnify and hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the project funded under this Agreement. Sponsor shall comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.
- E. **Costs associated with project review and evaluation of archeology and cultural resources are eligible for reimbursement under this agreement. Costs that exceed the budget grant amount shall be the responsibility of the Sponsor Inadvertent Discovery Plan. The Sponsor shall request, review, and be bound by the RCO Inadvertent Discovery Plan, and:**
  - 1) Keep the IDP at the project site.
  - 2) Make the IDP readily available to anyone working at the project site.
  - 3) Discuss the IDP with staff and contractors working at the project site.
  - 4) Implement the IDP when cultural resources or human remains are found at the project site.

## F. Discovery

- 1) If any archaeological or historic resources are found while conducting work under this Agreement, the Sponsor shall immediately stop work and notify RCO, the Department of Archaeology and Historic Preservation at (360) 586-3064, and any affected Tribe, and stop any activity that may cause further disturbance to the archeological or historic resources.
- 2) If any human remains are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then RCO, all in the most expeditious manner, and stop any activity that may cause disturbance to the remains. Sponsor shall secure the area of the find will and protect the remains from further disturbance until the State provides a new notice to proceed.
  - a) Any human remains discovered shall not be touched, moved, or further disturbed unless directed by RCO or the Department of Archaeology and Historic Preservation (DAHP).
  - b) The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

## RECORDS

- A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. **Maintenance and Retention.** The Sponsor shall maintain books, records, documents, data and other records relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of nine years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit is started before the expiration of the nine (9) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- D. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

## PROJECT FUNDING

- A. **Authority.** This Agreement and funding is made available to Sponsor through the RCO.
- B. **Additional Amounts.** The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement.
- C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a

waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.

- D. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

## PROJECT REIMBURSEMENTS

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, whichever has been designated to apply. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may request reimbursement only after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in the PROJECT FUNDING Section. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor, or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.
- C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- D. **Conditions for Payment of Retainage.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the following has occurred:
- 1) RCO has accepted the project as a completed project, which acceptance shall not be unreasonably withheld.
  - 2) On-site signs are in place (if applicable); Any other required documents and media are complete and submitted to RCO; Grant related fiscal transactions are complete, and
  - 3) RCO has accepted a final boundary map of the project area for which the Agreement terms will apply in the future.

## RECOVERY OF PAYMENTS

- A. **Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, fails to meet its percentage of the project total, and/or fails to comply with any of the terms and conditions of the Agreement, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.
- B. **Return of Overpayments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Sponsor received such overpayment. Unless the overpayment is due to an error of RCO, the payment shall be due and owing on the date that the Sponsor receives the overpayment from the RCO. If the payment is due to an error of RCO, it shall be due and owing 30 days after demand by RCO for refund.

## COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement and to be reimbursed by Sponsor for any grant funds paid to Sponsor (even if such funds have been subsequently paid to an agent), without liability to RCO or, in RCO's discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

## INCOME (AND FEES) AND USE OF INCOME

See WAC 286-13-110 for additional requirements for projects funded from the RCFB.

- A. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.
- B. **Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, rent, franchise fees, ecosystem services, carbon sequestration, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:
  - 1) The Sponsor's matching resources;
  - 2) The project's total cost;
  - 3) The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the grant funding;
  - 4) The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
  - 5) Capital expenses for similar acquisition and/or development and renovation; and/or
  - 6) Other purposes explicitly approved by RCO or otherwise provided for in this agreement.
- C. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored and shall be consistent with the:
  - 1) Grant program laws, rules, and applicable manuals;
  - 2) Value of any service(s) furnished;
  - 3) Value of any opportunities furnished; and
  - 4) Prevailing range of public fees in the state for the activity involved.

## PROCUREMENT REQUIREMENTS

- A. **Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists, the Sponsor must follow these minimum procedures:
  - 1) Publish a notice to the public requesting bids/proposals for the project;
  - 2) Specify in the notice the date for submittal of bids/proposals;
  - 3) Specify in the notice the general procedure and criteria for selection; and
  - 4) Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
  - 5) Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

## TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in the applicable manuals, or approved by RCO in writing.

- A. **Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the

equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.

- B. **Loss or Damage.** The Sponsor shall be responsible for any loss or damage to equipment.

#### **RIGHT OF INSPECTION**

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement. If a landowner agreement or other form of control and tenure limits access to the project area, it must include (or be amended to include) the RCO's right to inspect and access lands acquired or developed with this funding assistance.

#### **STEWARDSHIP AND MONITORING**

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO consistent with the existing laws and applicable manuals. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the RCO; provided that RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or safety. It is the sole responsibility of the Sponsor to perform such additional monitoring as may be adequate for such purposes.

#### **PREFERENCES FOR RESIDENTS**

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

#### **ACKNOWLEDGMENT AND SIGNS**

- A. **Publications.** The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- B. **Signs.**
- 1) During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless waived by the director; and
  - 2) During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.
- C. **Ceremonies.** The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies and in all advertisements and mailings thereof, and any and all of its related digital media publications.

#### **PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS**

The following provisions shall be in force:

- A. **Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration. It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.
- B. **Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if



the RCO guidance would not meet such requirements.

- 1) Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the RCO must receive prior written approval of the RCO.
- C. **Control and Tenure.** The Sponsor must provide documentation that shows appropriate tenure and term (such as long-term lease, perpetual or long-term easement, or perpetual or long-term fee simple ownership, or landowner agreement or interagency agreement for the land proposed for construction, renovation, or restoration. The documentation must meet current RCO requirements identified in this Agreement as of the effective date of this Agreement unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.
- D. **Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009; "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.
- E. At no time shall the Sponsor design, construct, or operate this grant funded project in a way that unreasonably puts the public, itself, or others at risk of injury or property damage. The Sponsor agrees and acknowledges that the Sponsor is solely responsible for safety and risk associated with the project, that RCO does not have expertise, capacity, or a mission to review, monitor, or inspect for safety and risk, that no expectation exists that RCO will do so, and that RCO is in no way responsible for any risks associated with the project.

#### LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

- A. **Long-Term Obligations.** This section applies to completed projects only.
- B. **Perpetuity.** For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO. The RCO requires that the project area continue to function for the purposes for which these grant funds were approved, in perpetuity.
- C. **Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, renovated, and/ or restored pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property (or a portion of it) to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. All real property or facilities acquired, developed, renovated, and/or restored with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policies or unless a transfer or change in use is approved by the RCO through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon all terms of the Agreement, and all applicable state or federal laws or regulation.
- 1) When a conversion has been determined to have occurred, the Sponsor shall remedy the conversion as set forth in this Agreement (with incorporated documents) and as required by all applicable policies, manuals, WACs and laws that exist at the time the remedy is implemented or the right to the remedy is established by a court or other decision-making body, and the RCO may pursue all remedies as allowed by the Agreement or law.

#### CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force for this agreement:

- A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with the grant funds, including undeveloped sites, are built, operated, used, and maintained:
- 1) According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
  - 2) In a reasonably safe condition for the project's intended use;

- 3) Throughout its estimated useful service life so as to prevent undue deterioration;
  - 4) In compliance with all federal and state nondiscrimination laws, regulations and policies.
- B. **Open to the public.** Unless otherwise specifically provided for in the Agreement, and in compliance with applicable statutes, rules, and applicable WACs and manuals, facilities must be open and accessible to the general public, and must:
- 1) Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.
  - 2) Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
  - 3) Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals or, by a decision of the RCO director in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

#### **ORDER OF PRECEDENCE**

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- E. State Constitution, RCW, and WAC;
- F. Agreement Terms and Conditions and Applicable Manuals;
- G. Applicable deed restrictions, and/or governing documents.

#### **LIMITATION OF AUTHORITY**

Only RCO's Director or RCO's delegate authorized in writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

#### **WAIVER OF DEFAULT**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

#### **APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH**

The Funding Entity (if different from RCO) and RCO rely on the Sponsor'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 may be deemed a breach of this Agreement.

#### **SPECIFIC PERFORMANCE**

RCO may, at its discretion, enforce this Agreement by the remedy of specific performance, which means Sponsors' completion of the project and/or its completion of long-term obligations as described in this Agreement. However, the remedy

of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the RCO shall be deemed exclusive. The RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

## **TERMINATION AND SUSPENSION**

The RCO requires strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

### **A. For Cause.**

- 1) The RCO director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
  - a) If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
  - b) If the Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
  - c) If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;
- 2) Prior to termination, the RCO shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
- 3) RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

**B. For Convenience.** Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

- 1) The Sponsor was not in default; or
- 2) Failure to perform was outside Sponsor's control, fault or negligence.

### **C. Rights and Remedies of the RCO.**

- 1) The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
- 2) In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement due to Sponsor's breach of the Agreement or other violation of law, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent repayment would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

**D. Non Availability of Funds.** The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

- 1) **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides

notice to continue work.

- 2) **No Waiver.** The failure or neglect of RCO to require strict compliance with any term of this Agreement or to pursue a remedy provided by this Agreement or by law shall not act as or be construed as a waiver of any right to fully enforce all rights and obligations set forth in this Agreement and in applicable state or federal law and regulations.

#### **DISPUTE HEARING**

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the RCO, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned 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 Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the persons chosen by the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three person panel is established.

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 on 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 majority decision of the dispute panelists, unless the remedy directed by that panel is beyond 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. 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.

#### **ATTORNEYS' FEES**

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own costs and attorneys' fees.

#### **GOVERNING LAW/VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in the Superior Court of a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington and agrees to venue as set forth above.

#### **SEVERABILITY**

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

#### **END OF STANDARD TERMS AND CONDITIONS**

This is the end of the Standard Terms and Conditions of the Agreement.

ILLAHEE — The decaying floats and timber pilings of the Port of Illahee dock can be a challenge to visit. Drivers find a few spots of steep and angled parking, dock-goers have no permanent bathroom (save for a rented portable toilet) and boaters and fishermen at times get tangled up at what can be a crowded space at the dock's end.

More than \$1.3 million from the state will help the port to change all that in the coming years. Two new docks will create 11 slips for boaters and a fishing float of its own. A home north of the dock will be torn down to make way for 18 parking stalls and a boat launch. And a permanent bathroom will be built.

"It's a monumental change for the dock," said Illahee Port Commissioner Jim Aho.



The dock has always been owned and managed by the 1916-established Port of Illahee. Its three-person board of

commissioners saw a bigger project than just replacing its existing facility, which is in "severe disrepair," according to fellow Port of Illahee Commissioner Jon Buesch.

"It will be a place that people can drive to, boat to and bike to," Buesch said. "This project creates better access for the community to enjoy the water."



The port's plans even call for higher steel pilings on the dock, to ensure it is ready for sea-level rise expected with climate change over subsequent decades.

The port hired a grant writer to pursue funding, which came from the state's Recreation and Conservation Office. One drawback: the port got two of the three grants it had hoped for and will have to front greater matching funds — about \$611,000 — from the port's own pockets if it is to successfully undertake that project.

"We've gotta come up with more money than we thought we had to," Aho said.

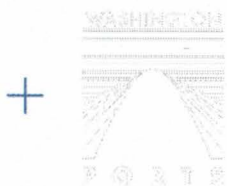
At a port meeting Wednesday, the commissioners discussed how to clear the remaining financial hurdle. One option is to sell a home the port purchased for an office in 2009 on nearby Ocean View Boulevard NE. The port ultimately rented out the residence to tenants and started meeting at a hall in Gilberton.

Selling that property, which also has a drain field the port hopes to sell separately as vacant land, could bring the bulk of the \$611,000. But the commissioners could also examine financing options to complete funding, Aho said.

The port is hopeful it can also tackle some environmental remediation at the same time as the other construction. The old Illahee store, located across Illahee Road from the dock, has aging underground fuel tanks left over from its days as a gas station. The port purchased the building, constructed in 1979, for \$109,000 in 2020, according to the Kitsap County Assessor's Office. The port commission would like to replace the building with a community center, port office and perhaps even some commercial space.

The port is on a list of state cleanup sites that Aho hopes will mean the removal of the tanks and restoration of the land there.

*Josh Farley is a reporter covering the military and health care for the Kitsap Sun. He can be reached at 360-792-9227, [josh.farley@kitsapsun.com](mailto:josh.farley@kitsapsun.com) or on Twitter at [@joshfarley](https://twitter.com/joshfarley).*



← BACK TO ALL EVENTS

## 2021 Small Ports Seminar

Thursday, October 21, 2021,

8:00 AM –

Friday, October 22, 2021, 12:00 PM

Enzian Inn

590 Highway 2, Leavenworth, WA

98826, United States ([map](#))

### Small Ports Seminar FAQ:

Hotel Information: A block of rooms has been reserved at the Enzian Inn and Linderhof Inn (next door) for this event. A variety of room types are available ranging from \$126.59/night to \$261.59/night plus a Resort Fee and tax; single and double occupancy rates differ.

**The cut-off date for room reservations is Monday, September 20, 2021.** Please make your room reservations ASAP in order to take advantage of the special group rate; our block may sell out prior to the reservation cut-off date.

**Reservations can be made by calling (800) 223-8511** or [www.enzianinn.com](http://www.enzianinn.com), reference the Washington Public Ports Association Small Ports Seminar group (Group Code 10563). A credit card is needed to secure your reservation.

*Check-In is 4:00pm; Check-Out is 11:00 am.*

**Cancellations must be made 14 days prior** to your arrival date to avoid being charged for one night's stay plus tax. A "no-show" is charged to the individual for their first night's room and tax.

*Early departures* are subject to a \$50 charge if check-out date is not noted 24 hours prior to actual departure.

Can I bring a guest and what portion of the event can they attend?



Yes you can bring a guest! Guests are invited and encouraged to attend the Thursday evening reception and there is no additional fee.

Do I need to register my guest?

Yes, please register your guest. There is a place on the on-line registration form to register them. This helps us ensure that food and set-up preparations are correct.

If you have dietary restrictions, please note this in the appropriate area on the on-line registration form so accommodations can be made.

Do we receive Legal or Educational Credits for this seminar?

Attendees can obtain a "Certificate of Attendance" document at the seminar to self-report attendance.

**Is there a Registration Deadline?** The WPPA Small Ports Seminar registration deadline is October 15, 2021.

**What if I have to cancel?** A \$75 administration fee will be charged for cancellations received after October 15 and for registrants who fail to show.

*Questions?* Contact Missy Goodell at (360) 943-0760 or [mgoodell@washingtonports.org](mailto:mgoodell@washingtonports.org).

Earlier Event: September 23  
2021 Environmental Seminar

Later Event: December 1  
2021 Finance & Administration Seminar