



PO Box 1180 • Port Townsend, WA 98368

Administration: (360) 385-0656

Operations: (360) 385-2355

Fax: (360) 385-3988

**Port of Port Townsend  
1st Monthly Business Meeting  
Wednesday, June 12, 2019, 1:00 p.m.  
Port Commission Building  
333 Benedict Street  
Port Townsend, WA**

- I. Call to Order / Pledge of Allegiance
- II. Approval of Agenda
- III. Public Comments (related to/not related to the agenda)
- IV. Consent Agenda
  - A. Approval of Regular Business Meeting Minutes – May 22, 2019.....1-4
  - Approval of Special Meeting Minutes – May 28, 2019.....5
  - B. Approval of Warrants
- V. Second Reading
  - A. Lease Policy.....6-13
- VI. First Reading
- VII. Regular Business
  - A. Best Coast Canvas Lease.....14-35
  - B. FAA Grant Funding Authorizing Resolution No. 703-19.....36-41
- VIII. Staff Comments
- IX. Commissioner Comments
- X. Next Public Workshop & Regular Business Meeting:  
Wednesday, June 26, 2019. Workshop at 3:00 pm, meeting at 5:30 pm  
Port Commission Building, 333 Benedict Street, Port Townsend, WA
- XI. Executive Session
- XII. Adjournment

## PORT COMMISSION REGULAR BUSINESS MEETING – May 22, 2019

The Port of Port Townsend Commission met in regular session at the Commission Building, 333 Benedict Street, Port Townsend, WA

Present: Commissioners –Putney, Hanke & Tucker  
Interim Executive Director Pivarnik  
Auditor Berg  
Deputy Director Toews  
Minutes – Nelson  
Attorney Chmelik (via Skype audio/visual)

### I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Putney called the meeting to order at 5:30 p.m.

### II. APPROVAL OF AGENDA:

**Commissioner Tucker moved to approve the Agenda as presented.**  
**Commissioner Hanke seconded the motion.**  
**Motion carried by unanimous vote.**

### III. PUBLIC COMMENTS (00:00:45):

Ron Hayes asked a question related to the new cash basis reporting.

Bertram Levy discussed the stormwater rate increase and commented on water meter and backflow preventer costs.

Chris Bakken, Sea Marine, read a letter he sent to the Commission regarding his desire to lease the “back forty” area at Point Hudson.

Pam Petranek representing Port Townsend Marine Trades Association (PTMTA), read a resolution passed by the PTMTA in March in support of Sea Marine’s request to lease the “back forty”.

Pete Langley, also with the PTMTA, spoke in support of Sea Marine’s request.

Commissioner Tucker commented on the need for a DOE stormwater permit.

Discussion ensued on Sea Marine’s request.

### IV. CONSENT AGENDA (00:15:28):

A. Approval of Public Workshop Minutes – May 8, 2019

Approval of Regular Meeting Minutes – May 8, 2019

B. Approval of Warrants

Warrant #060546 through #060555 in the amount of \$15,719.74 for Payroll & Benefits

Electronic Payment in the amount of \$64,893.92 for Payroll & Benefits

Warrant #060556 through #060593 in the amount of \$76,962.56 for Accounts Payable

Electronic Debit in the amount of \$235.80 for WA State Dept. of Revenue Business

License Renewal for 2019

Electronic Debit in the amount of \$10,062.33 for WA State Dept. of Revenue Combined

Excise Tax Return for April 2019

**Commissioner Tucker moved to approve the Consent Agenda as presented.**

**Commissioner Hanke seconded the motion.**

**Motion carried by unanimous vote.**

V. SECOND READING (Action Items):

A. Resolution No 700-19 – Climate Mitigation & Adaptation (00:15:43):

Mr. Toews reminded Resolution No. 700-19 was presented for a First Reading at the May 8<sup>th</sup> meeting. Staff recommends adoption.

**Commissioner Tucker moved to adopt Resolution No. 700-19 as presented.**

**Commissioner Hanke seconded the motion.**

**Motion carried by unanimous vote.**

B. Stormwater Rate Increase (00:17:16):

Ms. Berg reviewed the information she presented at the May 8<sup>th</sup> Commission Meeting on the proposed Boat Haven stormwater rate increase, effective June 1<sup>st</sup>, costing tenants between \$3.32 and \$16.47 extra per month, depending on square footage of their tenancy. This increase is due to a stormwater rate increase the City imposed, in which the Port charges the same as City rates.

**Commissioner Tucker moved to adopt the stormwater rate increase as presented.**

**Commissioner Hanke seconded the motion.**

**Motion carried by unanimous vote.**

VI. FIRST READING (Discussion Only):

A. Leasing Policy (00:20:27)

Mr. Toews explained that staff believes the recommendations from the Leasing Policy Advisory Committee (LPAC) improved the policy, as presented. Staff recommends two revisions, including reinstating language to the common area maintenance (CAM) fees within Port-owned multi-tenant buildings; and, including a new provision requiring that rents increase to 125% if in “holdover” status.

Commissioner Tucker would like a parking policy created, with Commissioner Hanke in agreement. Commissioner Tucker also would like to see a citizen’s advisory committee formed to assist in creating the policy. Commissioner Putney stated this could be scheduled for discussion at a near future workshop.

Commissioner Putney pointed out in Item 7 – “cost approach”, spaces not included in leases such as the Point Hudson Jetty, the Larry Scott Trail, the rain gardens, etc. should be recognized, but no change is necessary to the lease policy document.

Mr. Chmelik discussed real and purposeful property.

VII. REGULAR BUSINESS:

A. Airport Garbage (00:34:09):

Mr. Pivarnik explained he received an email from local pilot and airport tenant Eric Taylor stating the garbage was not picked up at the airport and the dumpster was overflowing. Mr. Pivarnik stated the issue is that the garbage company either won’t pick up if overflowing or they will charge extra. He stated Port maintenance staff installed a combination lock on the environmental center but someone continues to dump their construction material. He explained the dumpster was meant for visiting pilots and has been abused. He explained garbage is the responsibility of each airport tenant, as stated in the lease agreements.

The commissioners agreed to lock up the environmental center to all and if the pilots would like to arrange for a dumpster, they can do this of their own accord.

B. April 2019 Financials (00:40:10):

Ms. Berg explained the blue highlighted line items noted in the quarterly year-to-date comparisons and the budget, both affected by the new cash basis reporting. These line items were adjusted on the budget for timing of expenses (not total amounts). She stated revenues are doing very well and expenses are below budget.

VIII. STAFF COMMENTS (00:44:15):

Ms. Berg informed the Port has advertised for the Executive Assistant position. She stated tablets are being readied, hopefully, for next month's meter reads.

Mr. Toews reported that on May 15, he received word from the FAA Seattle ADO that the Port was granted 100% funding for the airport runway rehab project. He explained funding came in at \$4.8M, which includes construction, engineering and construction management. He stated Jefferson County International Airport was one of three airports in WA state and one in one hundred twenty-seven nation-wide to receive full funding. Discussion ensued on the Port's request to relocate the runways during the project, based on concerns from Commissioner Hanke.

Mr. Pivarnik stated being awarded 100% FAA funding is big news! He suggested the engineer and Seattle ADO should hear Commissioner Hanke's concerns on the runway relocation request.

He announced that Executive Assistant Sue Nelson has been hired to take on the newly created position of Lease & Contracts Administrator.

Mr. Pivarnik stated he has been tasked by the City to be on the interview committee for the City Manager position.

Last, Mr. Pivarnik stated he would be absent at the June 12 meeting and workshop.

IX. COMMISSIONER COMMENTS (00:57:00):

Commissioner Hanke stated the recent (WPPA) Spring Meeting was very informative.

Commissioner Tucker reported Ron Hayes recently discussed with him the need to update the Comprehensive Scheme of Harbor Improvements. Commissioner Tucker stated the last update was 2013. He believes it is time to update the Comp Scheme, as well as the five-year Capital Plan, which both would help to provide guidance on the possible use of IDD money. He suggested a community advisory committee be formed for both plans.

Commissioner Putney stated he has been meeting with the EDC and the Chamber on setting up a shuttle service between the airport and town, proposing Friday afternoons through Sunday.

He provided an update on his continued Broadband work.

He announced he attended the Spring Meeting and attended a talk by Attorney Chmelik on Port Powers.

X. NEXT PUBLIC WORKSHOP/REGULAR BUSINESS MEETING:

Wednesday, June 12, 2019. Workshop at 9:30 a.m. and the meeting at 1:00 p.m. in the Port Commission Building, 333 Benedict St, Port Townsend.

XI. EXECUTIVE SESSION:

None

XII. ADJOURNMENT:

The meeting adjourned at 6:31 p.m. there being no further business to come before the Commission.

ATTEST:

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Stephen R. Tucker, Secretary

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William W. Putney III, President

\_\_\_\_\_  
Peter W. Hanke, Vice President

**PORT COMMISSION SPECIAL BUSINESS MEETING– May 28, 2019**

The Port of Port Townsend Commission met in special session at the Port Commission Building, 333 Benedict Street, Port Townsend, WA

Present: Commissioners – Putney, Hanke and Tucker  
Interim Executive Director Pivarnik  
Auditor Berg  
Minutes – Nelson  
Excused: Deputy Director Toews

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Putney called the meeting to order at 9:00 a.m. and paused the meeting until Commissioner Hanke arrived at 9:04 a.m. (Commissioner Hanke provided notice of his late arrival.)

II. APPROVAL OF AGENDA:

**Commissioner Hanke moved to approve the agenda as presented.  
Commissioner Tucker seconded the motion.  
Motion carried by unanimous vote.**

III. RESOLUTION NO. 702-19 – DECLARING THE VESSEL “JELLYFISH” TO BE SURPLUS PROPERTY AND AUTHORIZING ITS SALE AND/OR DISPOSAL:

Mr. Pivarnik asked the Commission if there were any questions.  
**Commissioner Tucker moved to adopt Resolution No. 702-19 as presented.  
Commissioner Hanke seconded the motion.  
Motion carried by unanimous vote.**

IV. NEXT PUBLIC WORKSHOP & REGULAR BUSINESS MEETING:

Wednesday, June 12, 2019. ~~Workshop at 9:30 am~~, meeting at 1:00 pm.  
Port Commission Building, 333 Benedict Street, Port Townsend, WA

Mr. Pivarnik stated he and Ms. Berg would be absent at the June 12<sup>th</sup> workshop and meeting and asked the Commission if they would like to reschedule the workshop and/or meeting. A decision was made to keep the June 12 - 1:00 p.m. meeting and reschedule the 9:30 a.m. workshop to June 26 at 3:00 pm.

V. ADJOURNMENT:

The meeting adjourned at 9:09 a.m.

ATTEST:

\_\_\_\_\_  
Stephen R. Tucker, Secretary

\_\_\_\_\_  
William W. Putney III, President

\_\_\_\_\_  
Peter W. Hanke, Vice President

# PORT OF PORT TOWNSEND AGENDA COVER SHEET

<b>MEETING DATE</b>	June 12, 2019
<b>AGENDA ITEM</b>	<input type="checkbox"/> First Reading <input checked="" type="checkbox"/> Second Reading <input type="checkbox"/> Regular Business
<b>AGENDA TITLE</b>	V. A) Lease Policy
<b>STAFF LEAD</b>	Eric Toews, Deputy Director
<b>REQUESTED</b>	<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
<b>ATTACHMENTS</b>	A. Draft Lease Policy

# PORT OF PORT TOWNSEND

## ORGANIZATIONAL MANAGEMENT & BUSINESS PRACTICES

### A. BUSINESS PRACTICES

**INTRODUCTION:** The Port is the steward of public assets and provides essential public services for all the citizens of Jefferson County. The business practices of the Port of Port Townsend are directed toward faithful stewardship of public assets and achieving the Port's Strategic Plan objectives and strategies. Flexibility is needed, however, to adapt to changing conditions of a competitive market and to remain mindful of community values. Accordingly, the statements that follow are typical business practices of the Port, subject to change as conditions warrant.

1. The Port will maintain a sound financial plan. The financial plan will integrate the Port's guiding documents: The Comprehensive Scheme of Harbor Improvements & Strategic Plan; Business Plan; and Capital Improvement Plan. These plans will consider market conditions and identified and expected costs for capital maintenance, operations, and replacement of existing capital facilities.
2. The Port will be a good steward of the public assets entrusted to the Port.
  - a. The Port will seek to maintain, preserve and enhance the public assets under its stewardship.
  - b. The Port will comply with applicable environmental laws and require its tenants to follow environmental "best management practices".
  - c. The Port will seek to charge fees and rents for the use of Port facilities at "fair market value" to ensure that over time the Port remains a good steward of public assets by providing sufficient revenue to maintain and enhance the public assets and services provided by the Port.
3. The Port has a long-term goal of enhancing the public assets entrusted to it. Therefore, it must operate in a fiscally prudent manner today and tomorrow to achieve this long-term goal.
4. The Port will be a good and reliable business partner for its tenants and users.
  - a. The Port will provide fair and equal treatment to all tenants and users.
  - b. The Port will seek to provide facilities and services that enhance business success for Port tenants and users while maintaining a sound financial footing for the Port.
  - c. The Port will seek to provide a business environment that attracts new tenants.
5. The Port will be a good and reliable partner with other local governments, state agencies, tribes and the federal government.
  - a. The Port will seek ways to cooperate with other government partners to enhance the economic, environmental and community quality of life in Jefferson County.



- b. The Port will meet regularly with other local governments to explain the needs of the Port, to hear the needs of other governments and to seek common approaches and goals for the betterment of the citizens.
6. The Port will be a good and reliable business partner to the business community in Jefferson County.
- a. The Port will seek ways to cooperate with the business community of Jefferson County to enhance the economic, environmental and community quality of life in Jefferson County.
  - b. The Port will meet regularly with business and civic organizations to explain the needs of the Port, to hear the needs of others and to seek common approaches and goals for the betterment of the citizens.
7. The Port will use a "cost approach" for asset management. The Port seeks to manage its real and personal property utilizing a "cost center" approach in order that each facility be as self-supporting as possible.
- a. This cost center approach will include projections for operating revenue, operating costs and capital asset maintenance, operation and replacement.
  - b. Capital asset maintenance and operation costs should be funded by operating income from the cost center.
  - c. Capital replacement costs should be funded by the following:
    - i. Operating income from the respective cost center;
    - ii. Grant funds, if available;
    - iii. Debt serviced by general tax levy revenue, if available; and
    - iv. Special assessments (where costs are shared by benefitted businesses).

## **B. LEASING POLICY**

**INTRODUCTION:** A sound Leasing Policy is key to the long-term viability of the Port. The Port generates significant revenues which it uses to preserve and enhance its properties and facilities and thereby help drive the economy of Jefferson County. It is the policy of the Port of Port Townsend to (i) retain and recruit businesses that will provide sustainable community-wage jobs, and (ii) seek rents and charges for the use of public real and personal property that provide a fair rate of return to the citizens of Jefferson County.

The Strategic Plan articulates how the Port intends to fulfill its mission to the community. The Strategic Plan makes clear that the Port takes its mission to generate countywide economic vitality and employment opportunities seriously, but that it wishes to do so in a manner that balances the economic, environmental and social consequences of its decision-making. Consistent with the Strategic Plan, it is the Port's policy to negotiate leases that will: (i) attract and retain businesses based on sound business, financial and operational plans; and (ii) provide a fair rate of return for the Port so that the Port can continue to invest in the economic vitality of the community.

The general policies of the Port regarding industrial/commercial land and buildings are as follows:

1. Rental rates and charges for Port real and personal property should be the fair market rental rate and charges. It is recognized that fair market value rental rates and charges

help the Port to maintain the public assets thereby providing a predictable environment for Port tenants and quality facilities and services to the citizens of Jefferson County. The Port will generally charge fair market value lease rates, rental rates and charges for the use of Port real and personal property assets.

2. Fair market value rental rates should be based upon the value of the Port real property and improvements thereon multiplied by a Port standard rate of return. The value of Port property and improvements multiplied by a Port standard rate of return will provide a fair and equitable method of determining rental rates that treats all tenants fairly and provides a fair return to the citizens of Jefferson County.
3. The value of Port property and improvements should be determined by recurring market analyses. The Port should conduct recurring market analyses (i.e., at least once every five (5) years) to establish and maintain appropriate rental rates for Port-owned land and buildings. The Port will conduct periodic rental surveys of comparable properties in the Western Washington area (including land, buildings, and private and public assets). Market analyses and rental surveys may be completed by a MAI (Member of the Appraisal Institute) appraiser. The Port will also consider other indicators (modifiers) of reasonable fair market rental value in setting rental rates, including parcel size, location, inflation occurring since the date of the last survey, changes in the rental market since the date of the last survey, waiting lists, competing offers for the same properties, the overall economic climate and any other evidence of fair market rental value.
  - a. The Port should provide a table of the fair market value rental rates for all its classes of properties.
  - b. Absent a compelling reason, generally, the Port will charge the fair market value rental rates and refrain from providing a special rate to a particular tenant because this is generally unfair to other similarly situated tenants and is not in keeping with the Port's stewardship responsibilities.
  - c. Depending on the particular circumstances, tenants may be allowed a reasonable period (not to exceed two (2) years) to reach fair market value rent.
4. The Port's standard rate of return. Fair market rental value is based on the fee simple value of the Port real property and improvement thereon multiplied by at least nine and one-half percent (9.5%).
5. Rental rates should be adjusted annually and reevaluated periodically. Generally Port expenses, such as personnel, maintenance and repair, increase over time. Likewise, rental rates should increase over time and in-step with increases in the private sector rental market in Jefferson County. Therefore, each lease will include a provision that allows the Port to adjust rental rates to the fair market rental rates then prevailing for comparable properties in the Western Washington area at five (5) year intervals (beginning January 1, 2020), bearing in mind all allowable uses of the property and all services and amenities available to the property by virtue of its location. These adjustments are intended to minimize the misalignment that may occur between a fixed rate with CPI escalations and a reviewed market rate. However, periodic market rate adjustments should not result in more than a five percent (5%) increase in rent from the rent paid in the prior year. Alterations or improvements undertaken by a tenant to

make a property suitable for a tenant's purposes should not be factored in the valuation of the rental rate for a renewal or extension term of that tenant's lease.

- a. Between periodic rate adjustments in rent, adjustments equal to the amount found on the Consumer Price Index for all urban consumers (CPI-U) for Seattle-Tacoma-Bellevue (compiled by the US Department of Labor, Bureau of Statistics) will take effect annually.
  - b. Each lease will allow for the automatic CPI increase on the anniversary of its effective date. Rent adjustments should not result in a reduction in rent from the rate paid in the prior year.
6. Lease term & options to extend. An initial lease term for either land or buildings will be determined in consideration of the needs of the tenant, the investment of the tenant, design standards of any improvements, the useful life of the improvements, the economic value provided to the community, and the needs of the Port. The lease may provide options granted to the tenant to extend the lease.
- a. The initial term may be extended, provided that: the tenant has met the maintenance standards outlined in the lease, made upgrades extending the useful life of any improvements (including buildings), and the proposed additional term is supported by outside professionals such as structural engineers and/or architects, licensed inspectors, the generation of economic value to the community, and the needs of the Port.
  - b. Generally, the initial lease term and option periods together should not exceed the anticipated useful life of the improvements, or thirty (30) years.
  - c. Longer term leases may require the tenant to periodically upgrade improvements.
7. Special Assessments for Capital Improvements. Different classes of Port tenants and facility users benefit from particular Port capital infrastructure and improvements (e.g., Boat Yard stormwater system improvements, haul-out piers, etc.). From time to time, the Port may apply special assessments to fund the cost of capital improvements that directly benefit specific tenant classes and user groups. These special assessments should ensure that all directly benefited users equitably share in the cost of such capital improvements. The Commission will ensure that special assessments are subject to adequate public notice and opportunity for input prior to adoption and implementation.
8. Non-exclusive common areas – Multi-tenant buildings. The Port recognizes that multiple tenants may use common areas within Port-owned multi-tenant buildings such as entrance lobbies, restrooms, hallways, stairways and storage areas. The Port may require tenants that use common areas in multi-tenant buildings to pay fair market rent for the non-exclusive use, and share in an equitable manner, in the maintenance and upkeep of the common areas with the Port and other common area users.

## C. STANDARD LEASE PROVISIONS

**INTRODUCTION:** Prudent business practice requires that a standard Port lease be the basis of all lease negotiations. A standard lease provides fairness to all Port tenants and protection of public assets. It is noted that as the steward of public assets the Port is a unique landlord that must act in the public interest. Such standard provisions include but are not limited to the

following: indemnification and hold harmless, environmental, the Port's right of entry for inspection, maintenance of the premises, taxes, fixtures and equipment, liability and casualty insurance, retention of air rights, FAA requirements, condemnation, default, costs and attorney fees, notices, waivers, and month-to-month "holdover" tenancy upon termination of lease.

1. Use. The Port will seek to limit the use on its leaseholds to a specific purpose. Leases that allow that provide for "all use allowed by zoning" or "all legal uses" will not be approved.
2. Rent. The Port leases will contain standard provisions related to rent including late charges and penalties. The calculation of rent will include exclusive use areas and non-exclusive (common area) use areas within Port-owned multi-tenant buildings.
3. Multi-tenant buildings – Common area charges. Tenants using common areas within Port-owned buildings may be required to pay an equitable share of the cost of maintaining and operating such areas.
4. Utility charges. In addition to rent, tenants will pay for utilities used by the tenant and billed to the Port. Where possible, Port tenants should establish their own accounts with utility providers. Port utility charges, including water, should be priced to allow the Port to maintain and operate the system.
5. Rent security. All leases in excess of one-year should be secured by a rent performance bond or other security (cash deposit, blocked account) acceptable to the Port in an amount of not less than three (3) months' rent, applicable Washington state leasehold excise tax, anticipated common area charges, and anticipated utility charges. Leases of one year or less (including all options to renew) may be secured by one months' rent, applicable Washington state leasehold excise tax, and anticipated utility charges. However, pursuant to RCW 53.08.085, the Port Commission, in its sole discretion, may raise, lower, or waive the required rent security on leases of real property.
6. Structural Changes or Improvements. Structural changes to buildings require the prior written consent of the Port. Upon termination of the lease, all tenant owned improvements must be removed at the cost of the tenant, or, if not removed by the tenant and at the Port's option, either (i) removed by the Port at the tenant's expense or (i) become the property of the Port. Alterations or improvements undertaken by a tenant to make a property suitable for the tenant's purposes should not be included in the valuation of the rental rate for a renewal or extension term of that tenant's lease.
7. Assignment. The Port generally prohibits any assignment or sublease by a tenant without the prior written consent of the Port having first been obtained. The Port will allow assignment of the tenant's leasehold interest as collateral for a loan where the proceeds will be used on the leasehold.
8. Liability Insurance. Insurance provisions require the tenant to obtain and maintain commercial general liability insurance with the Port endorsed as an additional insured and prohibit cancellation of insurance without prior notice to the Port. The current amount of required insurance is \$1,000,000 combined single limit. The Port may

periodically revise this amount to keep pace with market conditions. The Port may require additional forms of insurance or additional limits of insurance for particular uses (for example pollution legal liability for a fueling operation).

9. Damage or destruction of tenant property on leasehold. The tenant will be solely responsible for damage or destruction of its property on the leasehold. This risk should be covered by tenant insurance.
10. Limited waiver of immunity under the Industrial Insurance Act. The Port will require all tenants to provide a limited waiver of immunity under the Industrial Insurance Act or other similar federal scheme for personal injury lawsuit against the Port brought by employees of the tenant.
11. Indemnifications. The tenant will be required to save, defend and indemnify the Port from (i) any claims arising from injuries on Port property or their leasehold as a result of their activities, (ii) any release of hazardous substances on the leasehold (iii) a violation of law by the tenant.
12. Lease enforcement. The leases will contain standard provisions (such as default, termination and attorney fees) to allow the Port to expeditiously enforce the terms of the lease.
13. Holding over. The leases will contain standard language which provides that continuing in possession of a premises after the expiration of a lease (i.e., "holding over") creates a month-to-month tenancy, subject to the same terms and conditions set forth in the prior lease, except that the rent will be increased to 125% of the rate in effect during the month preceding expiration of the lease.

#### **D. MAINTENANCE RESPONSIBILITIES & COSTS**

1. Maintenance responsibilities - Port-owned buildings.
  - a. The Port is responsible for maintaining in good condition the structural parts of the buildings it leases, including the foundations, bearing and exterior walls, subflooring and roofs, the unexposed electrical, plumbing and sewerage systems (including those portions of the systems lying outside the leasehold), exterior doors, window frames, gutters, downspouts, and the heating, and the ventilating and air conditioning system serving such buildings (if any).
  - b. Lessees are responsible for maintaining and repairing all interior walls, floors, ceilings, doors, interior and exterior windows and fixtures, and for repairing damage caused to any portion of Port-owned buildings.
2. Maintenance costs – Port-owned buildings. As may be applicable, the Port will schedule and coordinate all HVAC system, fire alarm and suppression system and gutter maintenance and may bill each tenant as part of its common area maintenance fees.

**E. CAPITAL IMPROVEMENTS**

Plan for Port-Owned Improvements. For Port-owned buildings or other improvements, Port staff will develop management plans that include maintenance and capital improvement schedules and budgets for each building. The maintenance and capital improvement budgets will be included in the Port's annual operating and capital improvement budgets and six-year capital facility plan (updated annually). This will include a reserve sinking fund for replacement of deteriorating items like roofs, asphalt, building poles, parking lots, landscaping, etc.

**F. DUE DILIGENCE**

Port staff will conduct due-diligence. For new tenants Port staff will conduct appropriate due diligence, which will include gathering financial data concerning the prospective tenants using a standard form developed by Port staff. In addition, for appropriate proposed transactions, Port staff will conduct appropriate additional due diligence (such as site visits, interviews of previous landlords and public records check). Port staff may also conduct appropriate due diligence for significant lease renewals or modifications.

**G. OPEN PUBLIC RECORDS**

All records public. All information provided to the Port is subject to the requirements of the Washington Public Records Act (chapter 42.56 RCW). All prospective tenants will be informed that anything submitted to the Port is a public record. If a public records request is made, the Port will notify the party (typically a prospective lessee) submitting the records.

**H. VARIATIONS FROM POLICY**

The policy set forth above may be varied from time to time to fit instances as is deemed advisable by the Port.

**I. REVIEW OF POLICY**

This leasing policy will be reviewed from time to time as deemed appropriate by the Port Commission.

# PORT OF PORT TOWNSEND AGENDA COVER SHEET

<b>MEETING DATE</b>	June 12, 2019
<b>AGENDA ITEM</b>	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
<b>AGENDA TITLE</b>	VII. A) Best Coast Canvas Lease
<b>STAFF LEAD</b>	Eric Toews, Deputy Director
<b>REQUESTED</b>	<input type="checkbox"/> Motion <input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
<b>ATTACHMENTS</b>	A. Memo B. Summary of Key Terms C. Draft Lease-Best Coast Canvas

# PORT OF PORT TOWNSEND

## INFORMATIONAL MEMO

**DATE:** 6/7/2019  
**TO:** Port Commission  
**FROM:** Eric Toews, Deputy Director  
**SUBJECT:** Best Coast Canvas, Inc. – Proposed Armory Building Lease Agreement

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**BACKGROUND:** Best Coast Canvas, Inc., owned by Leah S. Kefgen, specializes in custom marine canvas work (e.g., dodgers, sail covers, small-boat covers, flybridge covers, hatch covers, winch covers, hand-rail covers, binnacle and instrument covers, interior and exterior cushions, shipwright's aprons and other custom canvas products). Ms. Kefgen presently is subleasing space from the Port Townsend Shipwright's Co-Op at Boat Haven.

Ms. Kefgen approached Port staff early this year requesting a lease agreement for a portion of the Armory Building at Point Hudson. Ms. Kefgen was originally anticipating lease of only 1,200 square feet in the southwest corner of the ground floor of the building, which was to be partitioned from the rest of the space at the lessee's expense. However, issues associated with emergency ingress and egress to the space proposed to be partitioned with the City Building Department and East Jefferson Fire-Rescue. In consequence, Port staff and Ms. Kefgen have agreed that the general area on the ground floor once rented by Mr. Steve Chapin (approximately 3,000 s.f.) is a preferable option. Ms. Kefgen would then seek (subject to prior written authorization of the Port) to sublet up to 1,800 square feet of the space to the Northwest Maritime Center (NWMC) for additional storage.

Accordingly, Port staff has proposed a two (2) year lease of the premises (approximately 3,000 s.f.), along with three (3) one (1) year options.

**DISCUSSION:** The proposed premises include the entire space formerly rented by the Point Hudson Boat Shop (i.e., Mr. Steve Chapin) on the ground floor of the Armory Building. It is proposed that the base rate be established at \$0.585 per square foot. Port staff believe this represents fair value for the space and is commensurate with the rent currently being paid by other tenants of the building (e.g., Port Townsend Sails, Bryon Toss Rigging).

Accordingly, the rent at lease inception would be \$1,755.00 plus Leasehold Tax (LHT) at 12.84% (\$225.34). In the event Best Coast Canvas were to become a "holdover" tenant at the end of the lease term, the rent would increase to 125% of that paid in the month preceding lease termination.

The proposed security deposit is equal to three (3) months' rent at the inception of the lease term. Staff believes that Best Coast Canvas serves an important segment of the Port's



customer base and would be an asset to the marine-related use mix in what the City has designated as the “Maritime Heritage Corridor” in its Shoreline Master Program (SMP).

**RECOMMENDATION:** Authorize the Executive Director to execute the attached lease with Best Coast Canvas, Inc.

**ATTACHMENTS**

- Summary of Key Terms – Point Hudson Armory (portion of) Lease
- Draft Port-Best Coast Canvas Building Lease Agreement (including Exhibit “A”, graphic depiction of the premises)

**PORT OF PORT TOWNSEND:**  
**Summary of Key Terms - Point Hudson Armory Building (Portion of) Lease**  
**(June 12, 2019)**

1. **TENANT:** Best Coast Canvas, Inc. (Leah Kefgen, President/Owner)
2. **PREMISES:** Approximately 3,000 square feet of marine-related light industrial building space located at 311 Jackson Street, at Point Hudson, commonly known as the "Armory Building".
3. **TERM:** Two (2) years, beginning on August 1, 2019 and ending on July 31, 2021, along with three (3) one (1) year options.
4. **RENT:** \$1,755.00 per month (calculated at 0.585¢ per square foot) plus LHT (i.e.,  $\$1,755 + 12.84\% (\$225.34) = \$1,980.34$ ). Rent adjusted per CPI-U beginning year 2; base rent may be adjusted beginning in year three (i.e., based on market rate study).
5. **HOLDING OVER:** In the event Lessee allows the lease to expire without negotiating a new agreement with the Port, the tenancy will roll over into a month-to-month basis, with all other provisions of the lease agreement remaining in effect, except that the rent will increase to 125% of the rent due in the month preceding the holdover (e.g., if the rent were \$1,755 + LHT, the rent in holdover status would be + 25%, or \$2,193.75 + LHT).
6. **USE OF PREMISES:** Marine-related light industrial space for on-site fabrication retailing of custom marine canvas products.
7. **SECURITY:** One (1) month security + LHT (\$1,980.34) at lease inception; lessee to deposit \$360.07 per month thereafter until the security reaches \$5,941.11 (i.e., three (3) month's rent + LHT).
8. **UTILITIES:** All utilities are the responsibility of the Lessee.
9. **MAINTENANCE & REPAIR:** All maintenance and repairs are the Lessee's responsibility.
10. **INSURANCE:** Per Port policy. Commercial General Liability of \$1,000,000 combined single limit; Workers Compensation Insurance of not less than \$1,000,000 per occurrence; insurance certificates naming the Port as an additional insured; proof of insurance must be provided prior to occupancy.
11. **ASSIGNMENT/SUBLEASE:** Permitted only by prior written consent of the Port.

12. **DEFAULTS/TERMINATION:** Time is of the essence. Failure to pay rent, or to abide by the covenants/agreements contained in the lease, may serve as a basis for termination. Lessee will be provided with fifteen (15) days' written notice to cure defaults. Port may also terminate upon one-hundred and twenty (120) days' written notice, at its sole discretion, for public or private use in connection with the operation of the business of the Port.
  
13. **ENVIRONMENTAL:** Due to the nature of the use – Hazardous Substances Warranty & Agreement not applicable.

**PORT OF PORT TOWNSEND  
POINT HUDSON BUILDING LEASE**

**THIS LEASE AGREEMENT** made this \_\_\_\_\_<sup>th</sup> day of June 2019, by and between the PORT OF PORT TOWNSEND, a municipal corporation organized and existing under the laws of the State of Washington, Lessor, hereinafter referred to as "the Port," and BEST COAST CANVAS, INC., a Washington corporation, hereinafter referred to as "Lessee,"

**WITNESSETH:**

That the parties hereto do mutually agree as follows:

- 1. LEASED PREMISES:** The Port hereby leases to Lessee, and Lessee hereby hires and leases from the Port, the following described premises situated in the City of Port Townsend, Jefferson County, State of Washington:

Approximately 3,000 square feet of shop space in the southwest quadrant of the ground floor of the Armory Building at Point Hudson, located at 311 Jackson Street, Port Townsend WA 98368

hereinafter referred to as "the premises." All grounds and parking areas surrounding the Armory Building are excluded from the leased premises. The premises (which are discontiguous and exclude a "clear zone" required to be kept clear for emergency ingress and egress) are depicted upon Exhibit "A", which is attached hereto and incorporated herein by this reference.

- 2. TERM:** The term of this Lease is two (2) years, beginning August 1, 2019, and ending at midnight, July 31, 2021 unless extended or sooner terminated as provided in this Lease. The Lessee shall also have an option to extend the lease term by three (3) additional one (1) year terms. Notification to extend the Lease will be done in writing at least ninety (90) days prior to end of the initial lease term or any extension thereof. Lessee shall not be entitled to renew this Lease unless the Lease is in good standing at the time of renewal and the Lessee is not in default under the terms of this Lease or any other lease or agreement with the Port. The terms and conditions of any renewal shall be the same as set forth in this Lease, except that rent shall be recalculated as provided in Paragraph #3, below, and the terms of this Lease shall be updated to be consistent with the terms and conditions then existing in the Port's standard form Commercial Lease.
- 3. RENT:** Lessee agrees to pay as rental for the leased premises the sum of **One Thousand Seven Hundred and Fifty-Five Dollars and Zero Cents (\$1,755.00)** plus all

applicable taxes.<sup>1</sup> The rent for each month shall be paid to the Port in advance on or before the first day of each and every month of the lease term, and shall be payable at such place as the Port may hereinafter designate. Beginning in year three (3) and every three (3) years thereafter, the rental rate may be adjusted to the fair market rental rate then prevailing for comparable commercial and/or industrial property in the Western Washington area, bearing in mind all allowable uses of the property and all services and amenities available to the property by virtue of its location. In the event that the parties are unable to reach agreement on the fair market rate adjustment, the rate shall be determined by arbitration before a single arbitrator who shall be jointly selected by the parties or by the Jefferson County Court. The rental rate beginning in year two (2) and annually throughout the term of the lease will be adjusted by an amount equal to the accumulative amount found on the Consumer Price Index for all urban consumers (CPI-U) for Seattle-Tacoma-Bremerton, which is compiled by the Department of Labor, Bureau of Statistics. In no event shall any rent adjustment result in a reduction in rent from the rate paid in the prior year.

4. **LATE CHARGE:** In the event that any installment of rent remains unpaid more than twenty (20) days after it is due, then Lessee shall also be obliged to pay a "late charge" as per the Port of Port Townsend Rate Schedule then in effect.
  
5. **SECURITY DEPOSIT:** Upon the execution of this Lease, Lessee shall deposit with the Port security in the amount of **One Thousand Nine Hundred and Eighty Dollars and Thirty-Four Cents (\$1,980.34)**; each month thereafter Lessee shall deposit an additional **Three Hundred and Sixty Dollars and Seven Cents (\$360.07)** until the security reaches **Five Thousand Nine Hundred Forty-One Dollars and Eleven Cents (\$5,941.11)**,<sup>2</sup> in order to guarantee performance under this Lease. This Lease shall not be effective until the initially required deposit of **One Thousand Nine Hundred Eighty Dollars and Thirty-Four Cents (\$1,980.34)** is made with the Port. The deposit shall be held by the Port as security for Lessee's faithful performance of all of its obligations under this Lease. Any interest earned on amounts deposited shall be retained by the Port. The deposit shall be returned to Lessee upon termination of this Lease, less any charges owing to the Port or expenses incurred by the Port in repairing damage caused by Lessee or restoring the leased premises to the condition required upon termination of this Lease.

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<sup>1</sup> Calculated as follows: 58.5¢ per s.f. x 3,000 s.f. = \$1,755.00 rent; LHT @ 12.84% x \$1,755.00 = \$225.34; total = \$1,980.34.

<sup>2</sup> Required security for all Port leases is three (3) months (minimum) + LHT, calculated as follows: \$1,755.00 per month x 3 = \$5,265.00; \$5,265.00 x 12.84% = \$676.03; \$5,265.00 + \$676.03 = \$5,941.03. Required security of \$5,941.11 in this lease due to rounding.

6. **USE OF PREMISES:** Lessee shall use the premises for the purposes of fabrication and on-site retailing of custom marine canvas products manufactured on-site and shall not use them for any other purposes without the prior written consent of the Port. Lessee shall use the entire premises for the conduct of said business in a first-class manner continuously during the entire term of this Lease, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or redecorating or for reasons beyond Lessee's reasonable control. Except for ordinary and routine noises and vibrations associated with the manufacture of canvas products (e.g., pounding, sewing machine vibrations, etc.), Lessee agrees that it will not disturb the Port or any other tenant of the Port's by making or permitting any disturbance or any unusual noise, vibration or other condition on or in the premises.
7. **UTILITIES:** Lessee shall be liable for, and shall pay throughout the term of this Lease, all utility services furnished to the premises, including, but not limited to, light, heat, electricity, gas, water, sewerage, garbage disposal.
8. **ACCEPTANCE OF PREMISES:** Lessee has examined the leased premises and accepts them in their present condition "as is" and without further maintenance liability on the part of the Port, with the exception of deleting/removing the loose and unused electrical wiring in the ceiling prior to August 1, 2019. The Port makes no representations or warranties with respect to the condition, suitability, zoning restrictions, or usability, except the Port's right to grant a lease of the premises. Lessee acknowledges that Lessee has fully inspected the premises and is not relying on any statement or representation made by the Port or the Port's agents with respect to the condition of the premises, and Lessee assumes the responsibility and risks of the same, including any defects or conditions that cannot be observed by casual inspection.
9. **MAINTENANCE AND REPAIR:** Maintenance and repair of the premises and all improvements thereon is the sole responsibility of Lessee. Accordingly, at the expiration or sooner termination of this Lease, Lessee shall return the premises to the Port in the same condition in which received (or, if altered by Lessee with the Port's consent, then the premises shall be returned in such altered condition), reasonable wear and tear and damage by fire or unavoidable casualty excepted. Lessee's obligation to make repairs shall not extend to any repairs to the roof (structure of covering), to the foundations of the building or structure and exterior walls, of which the leased premises are a part, unless such repairs are necessitated by Lessee's negligence or failure to maintain the interior. Lessee shall, at its' own expense, and at all times:
  - a. Keep the premises, and the adjoining roadways and sidewalks, neat, clean and in a safe and sanitary condition;
  - b. Maintain and keep the leased premises in a good state of repair; and
  - c. Not commit waste of any kind.

- 10. ALTERATIONS AND IMPROVEMENTS:** Lessee shall make no alterations or improvements to or upon the premises or install any fixtures (other than trade fixtures which can be removed without injury to the premises) without first obtaining written approval from the Executive Director of the Port. When seeking the Port's approval, Lessee shall submit full plans and specifications for any proposed alterations and shall furnish proof of compliance with all applicable building codes and other regulations and shall apply for and obtain all necessary permits for such work. If the proposed improvements are estimated to cost more than \$25,000, the Port may require the posting of a completion bond as security for the completion of the improvements. Upon conclusion of the alterations, Lessee shall furnish "as-built" drawings of all improvements and alterations. The Port's approval of alterations shall also include agreement for disposition of the improvements upon termination of this Lease.
- 11. INSPECTION - "FOR RENT" SIGNS:** The Port reserves the right to inspect the leased premises at any and all reasonable times throughout the term of this Lease, PROVIDED, that it shall not interfere unduly with Lessee's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the premises for thirty (30) days prior to the expiration or sooner termination of this Lease.
- 12. POSSESSION:** If the Port shall be unable for any reason to deliver possession of the premises, or any portion thereof, at the time of the commencement of the term of this Lease, the Port shall not be liable for any damage caused thereby to Lessee, nor shall this Lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Lessee shall not be liable for any rent until such time as the Port can deliver possession, PROVIDED, that if Lessee shall, in the interim, take possession of any portion of the premises, it shall pay as rental the full rental specified herein reduced pro rata for the portion of the premises not available for possession by Lessee, AND PROVIDED FURTHER, that if the Port shall be unable to deliver possession of the premises at the commencement of the term of this Lease, Lessee shall have the option to terminate this Lease by at least thirty (30) days written notice, unless the Port shall deliver possession of the premises prior to the effective date of termination specified in such notice. If Lessee shall, with the Port's consent, take possession of all or any part of the premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable.
- 13. DAMAGE OR DESTRUCTION:**
- a. Should the premises or the buildings or structures of which the premises are a part be damaged by fire or other casualty, and if the damage is repairable within four (4) weeks from the date of the occurrence (with the repair work and the

preparations therefore to be done during regular working hours on regular work days), the premises shall be repaired with due diligence by the Port, and in the meantime the monthly minimum rental shall be abated in the same proportion that the untenable portion of the premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs.

- b. Should the premises or any buildings or structures of which the premises are a part be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the damage cannot be repaired within four (4) weeks of the occurrence, the Port shall have the option to terminate this Lease on thirty (30) days' notice, effective as of any date not more than sixty (60) days' after the occurrence. In the event that this paragraph shall become applicable, the Port shall advise Lessee within thirty (30) days after the happening of any such damage whether the Port has elected to continue the lease in effect or to terminate it. If the Port shall elect to continue this Lease in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this Lease, and the lease shall automatically terminate sixty (60) days after the occurrence of the damage. For the period from the occurrence of any damage to the premises to the date of completion of the repairs to the premises (or to the date of termination of the lease if the Port shall elect not to restore the premises), the monthly minimum rental shall be abated in the same proportion as the untenable portion of the premises bears to the whole thereof.

14. **INDEMNIFICATION AND HOLD HARMLESS:** The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained, or alleged to have been sustained by the Lessee or by others as a result of any condition (including existing or future defects in the premises) or occurrence whatsoever related in any way to the premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the premises and of the areas adjacent thereto except to the extent attributable to the negligence or other wrongdoing of the Port or its employees, contractors or agents. Lessee agrees to defend and to hold and save the Port harmless from all liability or expense of litigation in connection with any such items of actual or alleged injury or damage.
15. **INSURANCE:** Lessee agrees to maintain during the lease term liability insurance as set forth below, at Lessee's sole expense. All such insurance shall name the Port of Port Townsend as an additional insured and shall be with insurance companies acceptable to the Port.
  - a. Comprehensive General Liability Insurance against claims for injury or death to persons or damage to property with minimum limits of liability of \$1,000,000.00



combined single limit for each occurrence. Such insurance shall include but not be limited to bodily injury liability, personal injury liability, property damage liability, broad form property damage liability, contractual liability, and products/completed operations liability.

- b. Workers Compensation Insurance as will protect tenant's employees from claims under Washington Workers Compensation Act as well as all Federal Acts applicable to the tenant's operations at the site such as but not limited to U.S. Longshoremen and Harborworkers Act, Jones Act, and Federal Employers Liability section of the Washington Workers Compensation Policy and all Federal Acts Insurance shall not be less than \$1,000,000.00 for each occurrence.

The Lessee agrees to supply the Port with appropriate evidence to establish that its insurance obligations have been met, and that the insurance policy or policies are not subject to cancellation without at least thirty (30) days advance written notice to the Port. The conditions set forth in subparagraphs (a) and (b) of this Paragraph 15 shall be met prior to occupancy.

- 16. WAIVER OF SUBROGATION:** The Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance contracts, including any extended coverage endorsements thereto, PROVIDED, that this paragraph 16 shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of the Port or Lessee.
- 17. INCREASE IN COST OF INSURANCE:** Lessee shall not use the demised premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the leased premises are a part, and to the extent allocable to the term of this Lease, may be added to the amount of rental hereinabove specified and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.
- 18. TAXES:** Lessee shall be liable for, and shall pay throughout the term of this Lease, all license and excise fees and occupation taxes covering the business conducted on the premises, and all taxes on property of Lessee on the leased premises and any taxes on the leased premises or leasehold interest created by this Lease Agreement.
- 19. COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:** Lessee agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Lessee also agrees to comply with all applicable federal, state,

and municipal laws, ordinances, and regulations. Lessee further agrees that all buildings, structures or other improvements, approved by the Port, will be properly permitted by Jefferson County. Any fees for any inspection of the premises during or for the lease term by any federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

- 20. ASSIGNMENT OR SUBLEASE:** Lessee shall not assign or transfer this Lease or any interest therein nor sublet the whole or any part of the premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, otherwise, without the written consent of the Port first had and obtained. If Lessee is a corporation, Lessee further agrees that if at any time during the term of this Lease more than one-half (1/2) of the outstanding shares of any class of stock of Lessee corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this Lease or to members of their immediate families, such change in the ownership of the stock of the Lessee shall be deemed an assignment of this Lease within the meaning of this paragraph. If the Port shall give its consent to any assignment or sublease, this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent. The Port's consent will not unreasonably be withheld.
- 21. DEFAULTS:** Time is of the essence of this Lease Agreement, and in the event of the failure of Lessee to pay the rentals or other charges at the time and in the manner herein specified, or to keep any of the covenants or agreements herein set forth to be kept and performed, the Port may elect to terminate this Lease and reenter and take possession of the premises with or without process of law, PROVIDED, however, that Lessee shall be given fifteen (15) days' notice in writing stating the nature of the default in order to permit such default to be remedied by Lessee within said fifteen (15) day period. If upon such reentry there remains any personal property of Lessee or of any other person upon the leased premises, the Port may, but without the obligation so to do, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Lessee shall reimburse the Port for any expense incurred by the Port in connection with such removal and storage. The Port shall have the right to sell such stored property, without notice to Lessee, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Lessee to the Port, and the balance, if any, shall be paid to Lessee. Notwithstanding any such reentry, the liability of Lessee for the full rental provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee shall make good to the Port any deficiency arising from a re-letting of the leased premises at a lesser rental than that hereinbefore agreed upon. Lessee shall pay such deficiency

each month as the amount thereof is ascertained by the Port. Any failure by the owners, officers, or principals of Lessee to pay rentals, storage fees, moorage or any other charges owed to the Port under separate contract shall constitute default under provisions of this Lease Agreement.

- 22. TERMINATION BY PORT:** In the event that the Port, at its sole discretion, shall require the use of the premises for any purpose for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to the Lessee **one hundred and twenty (120)** or more days before the termination date specified in the notice. Lessee and the Port Executive Director will agree compensation to Lessee for loss of use, cost of relocation, and/or cost of improvement. In the event that the parties are unable to reach agreement on the compensation to Lessee, the amount shall be determined by arbitration before a single arbitrator who shall be jointly selected by the parties or by the Jefferson County Court if the parties cannot agree.
- 23. TERMINATION FOR GOVERNMENT USE:** In the event that the United States Government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the premises or any part thereof, the Port may, at its option, terminate this Lease as of the date of such taking, and, if Lessee is not in default under any of the provisions of this Lease on said date, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.
- 24. TERMINATION BECAUSE OF COURT DECREE:** In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.
- 25. SIGNS:** No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted or within the leased premises, including the windows and doors thereof, without the approval of the Executive Director of the Port first had and obtained. At the termination or sooner expiration of this Lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the premises, and correct any unsightly condition, caused by the maintenance and removal of said signs, etc.

- 26. INSOLVENCY:** If Lessee shall file a petition in bankruptcy, or if Lessee shall be adjudged bankrupt or insolvent by any court, or if a receiver of the property of Lessee shall be appointed in any proceeding brought by or against Lessee, or if Lessee shall make an assignment for the benefit of creditors, or if any proceedings shall be commenced to foreclose any mortgage or any other lien on Lessee's interest in the premises or on any personal property kept or maintained on the premises by Lessee, the Port may at its option, terminate this Lease.
- 27. WAIVER:** The acceptance of rental by the Port for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Lessee in writing. No waiver by the Port of any default hereunder by Lessee shall be construed to be or act as a waiver of any subsequent default by Lessee. After any default shall have been cured by Lessee, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of paragraph 21 hereof.
- 28. PROMOTION OF PORT COMMERCE:** Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote and aid the movement of passengers and freight through facilities within the territorial limits of the Port. Lessee further agrees that all incoming shipments of commodities that it may be able to control or direct shall be made through facilities within the territorial limits of the Port if there will be no resulting cost or time disadvantage to Lessee.
- 29. SURRENDER OF PREMISES – ATTORNEY'S FEES:**
- a. At the expiration or earlier termination of the term, Lessee shall surrender to the Port the possession of the premises and all improvements. Surrender or removal of fixtures, trade fixtures and improvements shall be as directed in Paragraph 10 of this Lease on ownership of improvements at termination. Lessee shall leave the surrendered premises and any other property in broom-clean condition except as provided to the contrary in provisions of this Lease on maintenance and repair of improvements. All property that Lessee is required to surrender shall become the Port's property at termination of this Lease. All property that Lessee is not required to surrender but that Lessee does abandon shall, at the Port's election, become the Port's property at termination. If Lessee fails to surrender the premises at the expiration or sooner termination of this Lease, Lessee shall defend and indemnify the Port from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from Lessee's failure to surrender.
  - b. In the event that either party shall commence legal action to interpret or to enforce any of the provisions of this Lease, the substantially prevailing party shall be entitled to an award for all reasonable costs and attorney fees incurred in any

such action. Any action brought under the terms of this Lease shall be maintained in Jefferson County, Washington.

- 30. HOLDING OVER:** Any holding over by the Lessee after the expiration of this Lease shall be construed as a tenancy at sufferance (unless such occupancy is with the written consent of the Port) in which event the Lessee will be a tenant from month to month, upon the same terms and conditions of this Lease, except at a rent for such holdover period of 125% of the rental rate in effect for the month preceding such holdover. Acceptance by the Port of rent after such termination shall not constitute a renewal.
- 31. ADVANCES BY PORT FOR LESSEE:** If Lessee shall fail to do anything required to be done by it under the terms of this Lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Lessee, and upon notification to Lessee of the cost thereof to the Port, Lessee shall promptly pay the Port the amount of that cost.
- 32. LIENS AND ENCUMBRANCES:** Lessee shall keep the leased premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the said premises by Lessee. At the Port's request, Lessee shall furnish the Port with written proof of payment of any item that would or might constitute the basis for such a lien on the leased premises if not paid.
- 33. NOTICES:** All notices hereunder may be delivered or mailed. If mailed, they shall be sent by certified or registered mail to the following respective addresses:

To Lessor:

THE PORT OF PORT TOWNSEND  
P.O. Box 1180  
Port Townsend, Washington 98368

To Lessee:

BEST COAST CANVAS, INC.  
c/o Leah Kefgen, President  
P.O. Box 398  
Port Townsend, Washington 98368

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

34. **JOINT AND SEVERAL LIABILITY:** Each and every party who signs this Lease, other than in a representative capacity, as Lessee, shall be jointly and severally liable hereunder.
35. **"LESSEE" INCLUDES LESSEE, ETC.:** It is understood and agreed that for convenience the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Lease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Lessee or Lessee under this Lease Agreement.
36. **CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
37. **SEVERABILITY:** If any term or provision of this Lease Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.
38. **NON-DISCRIMINATION - SERVICES:** The Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, sex, sexual orientation, or national origin in furnishing, or by refusing to furnish, to such person, or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

It is agreed that the Lessee's noncompliance with the provisions of this clause shall constitute a material breach of this Lease. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this Lease, or may pursue such other remedies as may be provided by law.

39. **NON-DISCRIMINATION - EMPLOYMENT:** The Lessee covenants and agrees that in all matters pertaining to the performance of this Lease, Lessee shall at all times conduct its business in a manner which assures fair, equal and non-discriminatory treatment of all persons without respect to race, creed or national origin and, in particular:
- a. Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities, and
  - b. Lessee will comply strictly with all requirements of applicable federal, state or local laws or regulations issued pursuant thereto relating to the establishment of non-discriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, creed, color, sex, sexual orientation, or national origin.

**40. EASEMENTS:** The Parties recognize that the Port facilities are continuously being modified to improve the utilities and services used and provided by the Port. The Port or its agents shall have the right to enter the demised premises of the Lessee, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, and the electrical service, and all other services required by the Port for its use. The Port is hereby granted a continuous easement or easements that the Port believes is necessary within the lease premises of the Lessee, without any additional cost to the Port for the purposes expressed hereinabove; PROVIDED however, that the Port by virtue of such use does not permanently deprive the Lessee from its beneficial use or occupancy of its leased area.

In the event that the Port does permanently deprive the Lessee from such beneficial use or occupancy, then an equitable adjustment in rent or in the cost required to modify its premises to allow the Lessee to operate its business, will be negotiated and paid by the Port to the Lessee. In the event that such entry by the Port is temporary in nature, then the Port shall reimburse the Lessee for the cost required to modify its premises for the temporary period that the Lessee is inconvenienced by such Port entry. The Port will not be responsible to the Lessee for any reduced efficiency, or loss of business occasioned by such entry.

**41. LESSEE'S ACKNOWLEDGEMENT OF PRESENCE OF CERTAIN SUBSTANCES:** Lessee acknowledges that, because the buildings at Point Hudson were constructed many years ago, that they may contain asbestos, creosote, lead paint and other substances that would not be allowed in modern construction. The Port will comply with the directives of any lawful authority that may require the removal or remediation of such substances and will not use any such substances during the renovation or remodeling of the Point Hudson facility, but Lessee agrees not to demand the removal of any such substances which do not impose a hazard to the health of Lessee and its employees, guests and invitees. In the event that any such substances need to be removed from the leased premises, Lessee agrees to cooperate with the Port and allow the removal of such materials, including the temporary cessation of Lessee's business activities, Lessee's rent shall be abated during any such period of disruption, but Lessee shall not be entitled to any damages or compensation for business interruption or loss of revenue, PROVIDED the Port moves expeditiously to complete such activities.

Lease Agreement dated this \_\_\_\_\_<sup>th</sup> day of June 2019 is hereby approved by the Port of Port Townsend, on this \_\_\_\_\_<sup>th</sup> day of June 2019 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

**LESSEE: BEST COAST CANVAS, INC.**

By: \_\_\_\_\_  
Leah Kefgen, President

**ATTEST:**

**PORT OF PORT TOWNSEND**

**APPROVED AS TO FORM**

\_\_\_\_\_  
Jim Pivarnik, Executive Director

\_\_\_\_\_  
Port Attorney



**STATE OF WASHINGTON**

**COUNTY OF JEFFERSON**

I certify that I know or have satisfactory evidence that LEAH KEFGEN signed this instrument and that he is authorized to execute the instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

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

Signature of  
Notary Public: \_\_\_\_\_

My Appointment Expires: \_\_\_\_\_

**STATE OF WASHINGTON**

**COUNTY OF JEFFERSON**

I certify that I know or have satisfactory evidence that JIM PIVARNIK signed this instrument and that he is authorized to execute the instrument as Executive Director of the Port of Port Townsend and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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

Signature of  
Notary Public: \_\_\_\_\_

My Appointment Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**GRAPHIC DEPICTION OF THE LEASED PREMISES**

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Depiction of the Leased Premises

Exhibit "A"



# PORT OF PORT TOWNSEND AGENDA COVER SHEET

<b>MEETING DATE</b>	June 12, 2019
<b>AGENDA ITEM</b>	<input type="checkbox"/> First Reading <input type="checkbox"/> Second Reading <input checked="" type="checkbox"/> Regular Business
<b>AGENDA TITLE</b>	VII. B) FAA Supplemental Discretionary Funding Grant Authorizing Resolution No. 703-19
<b>STAFF LEAD</b>	Eric Toews, Deputy Director
<b>REQUESTED</b>	<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
<b>ATTACHMENTS</b>	A. Memo B. Resolution No. 703-19

# PORT OF PORT TOWNSEND

## INFORMATIONAL MEMO

**DATE:** 6/7/2019  
**TO:** Port Townsend Port Commission  
**FROM:** Port Executive Staff  
**SUBJECT:** FAA Supplemental Discretionary Funding Grant Authorizing Resolution No. 703-19

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**ISSUE:** Should the Executive Director be authorized to execute and file such agreements as may be needed with the FAA to secure the up to \$4.8 million in federal funding awarded for Phase 3 of the JCIA Runway Reconstruction Project?

**BACKGROUND:** In March of 2018, the United States Congress enacted, and the President signed into law, a Consolidated Appropriations Act (the "Act") which provided supplemental discretionary funding to the United States Department of Transportation. The Act authorized the Secretary of Transportation to make "Grants-In-Aid for Airports", allowing infrastructure investments to be made at airports serving smaller and rural communities. The funding provided by the Act is in addition to the Airport Improvement Program (AIP) moneys typically appropriated by Congress.

In October of 2018, and in response to a notice of funding availability published by the Department of Transportation, the Port submitted a request for \$4.8 million of the "Grants-in-Aid for Airports" supplemental discretionary funding to support Phase 3 of the Jefferson County International Airport (JCIA) Runway Reconstruction project. On May 15, 2019, the United States Department of Transportation announced its intent to award \$779 million in supplemental funding to 127 airports in all 50 states and Puerto Rico. The Port of Port Townsend's request for funding was among the requests that were included in the notice of intent to award.

**DISCUSSION:** Phase 2 of the Runway Reconstruction project is nearly complete. The Port is awaiting final approval from the FAA of the final design and bid documents. Upon obtaining approval, the Port will publish an advertisement inviting contractors to bid upon the project. We currently anticipate that the bid opening will occur in mid-July. As an eligible airport sponsor that owns and manages a NPIAS airport, 100% of the cost of this Phase 3 work will be funded through FAA administered "Grants-In-Aid for Airports" supplemental grant monies, and no Port matching funds will be required. This funding will cover both hard (construction) and soft costs (construction management and construction phase engineering) associated with Phase 3.

Staff has prepared a draft of Port Commission Resolution No. 703-19, authorizing the Executive Director to execute and file all documents necessary to secure the award of "Grants-In-Aid for Airports" supplemental funding assistance for Phase 3 of the Runway Rehabilitation Project. It is anticipated that application materials to secure this funding will be submitted to the FAA in July of 2019. Although the contract for the construction work will be awarded in 2019, no active field work will occur at the JCIA until the spring of 2020.

**FISCAL IMPACT:** None. The "Grants-In-Aid to Airports" supplemental funding is 100% money – with no requirement for the Port to provide matching moneys.

**RECOMMENDATION:** Approve the attached Resolution 703-19 authorizing the Executive Director to execute and file such documents as may be necessary to secure the award of “Grants-In-Aid for Airports” supplemental funding assistance to support Phase 3 of the JCIA Runway Reconstruction Project.

**ATTACHMENTS:** One (1) attachment is included: draft Port Commission Resolution No. 703-19.

**RESOLUTION NO. 703-19**

**A Resolution of the Commission of the Port of Port Townsend**

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OF THE PORT OF PORT TOWNSEND TO EXECUTE A GRANT AGREEMENT WITH THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, SECURING SUPPLEMENTAL AIRPORT IMPROVEMENT PROGRAM (AIP) DISCRETIONARY FUNDING TO SUPPORT PHASE 3 OF THE RUNWAY RECONSTRUCTION PROJECT AT THE JEFFERSON COUNTY INTERNATIONAL AIRPORT AND ASSURING THAT IT WILL COMPLY WITH ALL UNDERSTANDINGS AND ASSURANCES OF SUCH GRANT AGREEMENT.**

**WHEREAS**, the Port of Port Townsend is a municipal corporation established in 1924 under Title 53 of the Revised Code of Washington; and

**WHEREAS**, under RCW 53, the Port of Port Townsend is responsible for developing and maintaining infrastructure that fosters economic development, providing transportation facilities that support commerce and communities within Jefferson County; and

**WHEREAS**, under RCW §53.08.020 the Port of Port Townsend is specifically authorized to construct, purchase, acquire, lease, maintain and operate air transfer and terminal facilities subject to all applicable state and federal laws; and

**WHEREAS**, the Consolidated Appropriations Act, 2018 (Pub.L. 115-141) enacted by the 115<sup>th</sup> United States Congress and signed into law by the President of the United States on March 23, 2018 provided supplemental discretionary funding to the Department of Transportation to enable the Secretary of Transportation to make “Grants-In-Aid for Airports” (subchapter 1 of chapter 471 and subchapter 1 of chapter 475 of title 49, U.S.C.); and

**WHEREAS**, in October of 2018, and in response to a Federal Register notice of funding availability (83 FR 31834), the Port of Port Townsend submitted a request to the FAA seeking 100% funding for Phase 3 of the Runway Reconstruction Project (site preparation, pavement reconstruction, new taxiway construction, and electrical improvements) at the Jefferson County International Airport; and

**WHEREAS**, on May 14, 2019, the United States Secretary of Transportation announced the intent to award approximately \$779 million in supplemental funding for infrastructure grants to 127 airports throughout the nation, including up to \$4.8 million to the Port of Port Townsend; and



**WHEREAS**, the Port of Port Townsend considers it to be in the best interests of the public to provide certain specific assurances, to agree to certain obligations and conditions, and to enter into a grant agreement with the FAA to secure this supplemental funding assistance; and

**WHEREAS**, the Port anticipates that total project cost for Phase 3 of the JCIA Runway Reconstruction Project will not exceed \$4,800,000, of which amount 100% is anticipated from the Grants-In-Aid for Airports funding described above, with no obligation to the Port of Port Townsend to provide matching funds; and

**NOW, THEREFORE, BE IT RESOLVED** by the Port Commission of the Port of Port Townsend, as follows:

1. Port Executive Director, Jim Pivarnik, or his designee, is authorized to execute and file such documents as may be necessary to secure the award of "Grants-In-Aid for Airports" supplemental funding assistance for Phase 3 of the JCIA Runway Reconstruction Project on behalf of the Port of Port Townsend with the Federal Aviation Administration (FAA). This authorization expressly includes required Certifications and Assurances for Airport Sponsors.
2. Port Executive Director, Jim Pivarnik, or his designee, is further authorized to administer the Port's previously promulgated Disadvantaged Business Enterprise (DBE) program for the Port of Port Townsend, a DOT/FAA requirement for all AIP supported projects exceeding \$250,000, which will ensure that small businesses owned and controlled by socially and economically disadvantaged individuals are provided a fair opportunity to compete for federally funded contracts involving the JCIA.
3. Any Grant-In-Aid for Airports funding assistance received will be used for direct costs associated with implementation of the project referenced above.
4. This Resolution becomes part of a formal submission to the FAA to secure the Grant-In-Aid for Airports supplemental funding assistance.
5. The Commission provided an opportunity for public comments on this matter during its June 12<sup>th</sup>, 2019 regular meeting, has given fair consideration to the interest of residents in proximity to the project area, has ensured that affected parties that use the JCIA have been informed and consulted during Phases 1 and 2 of the Runway Reconstruction project, and will continue to inform and consult with affected parties during the work conducted under Phase 3 of the project.

**ADOPTED this 12<sup>th</sup> day of June 2019, by the Commission of the Port of Port Townsend and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission duly affixed.**

**ATTEST:**

\_\_\_\_\_  
Stephen R. Tucker

\_\_\_\_\_  
William W. Putney, III President

\_\_\_\_\_  
Peter W. Hanke, Vice President

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Port Attorney