



**Port of Port Townsend  
Regular Commission Meeting Agenda  
Wednesday, February 12, 2020, 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
- IV. Consent Agenda
  - A. Approval of Special Business Meeting Minutes – January 22, 2020 ..... 1-5
  - B. Approval of Warrants
  - C. Approval of Offer Letter to Eron Berg
- V. Second Reading- *none*
- VI. First Reading - *none*
- VII. Regular Business
  - A. Proposed Change Order to JCIA Runway Reconstruction Contract – Incentive(s) for early completion ..... 6-8
  - B. Pete Stein Lease Agreement ..... 9-30
  - C. Quarter 4 Capital Project Progress Reports on the following projects listed below: ..... 31-42
    - 1. WDFW Air Quality Improvements (ongoing) ..... 32-33
    - 2. JCIA Runway Reconstruction (ongoing)..... 34-35
    - 3. Boat Haven Workyard Resurfacing (ongoing) ..... 36-37
    - 4. Point Hudson Jetty (South) Renovation (ongoing) ..... 38-40
    - 5. Boat Haven Main Breakwater Repairs (new) ..... 41-42
- VIII. Staff Comments
- IX. Commissioner Comments
- X. Next Public Regular Business Meeting:  
Wednesday, February 26, 2020. Meeting at 5:30 PM  
Port Commission Building, 333 Benedict Street, Port Townsend, WA
- XI. Executive Session - *none*
- XII. Adjournment

## PORT COMMISSION SPECIAL BUSINESS MEETING – Wednesday, January 22, 2020

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

Present: Commissioners Hanke, Putney & Petranek  
Executive Director Pivarnik  
Deputy Director Toews  
Finance Director & Port Auditor Berg  
Port Recorder Erickson

Port Attorney Chmelik (attending via Zoom online video)

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

Commissioner Hanke called the meeting to order at 1:00 PM.

### II. APPROVAL OF AGENDA (00:01:15):

Executive Director Pivarnik asked to add "D. Consider Ramp Fees for Fishing Tournament" under Regular Business.

**Commissioner Putney moved to approve the Agenda as amended.**

**Commissioner Petranek seconded the motion.**

**Motion carried by unanimous vote.**

### III. PUBLIC COMMENTS (00:01:47):

Gwendolyn Tracy commented on the change in staffing at the Port to reduce FTE by one and promote Terry Khile to Operations Manager over both yard and customer service staff. She gave the Port kudos on finances with this move and said she felt that Port staff were more than capable to handle problems like the net float. However, if another person were added to maintenance crew, it would help reduce costs by employing Port staff, rather than having to hire outside for some projects.

### IV. CONSENT AGENDA (00:03:50):

#### A. Approval of Public Workshop Minutes – January 8, 2020

Approval of Regular Business Meeting Minutes – January 8, 2020

#### B. Approval of Warrants

Warrant #061569 through #061578 in the amount of \$15,519.61 and Electronic Payment in the amount of \$68,357.98 for Payroll & Benefits.

Warrant #061579 through #061629 in the amount of \$250,702.45 for Accounts Payable.

Electronic Debit in the amount of \$1,342.05 to Washington State Employment Security Department for Paid Family Medical Leave.

Electronic Debit in the amount of \$20,218.76 to Washington State Department of Labor & Industries for 4<sup>th</sup> Quarter Tax Return.

Electronic Debit in the amount of \$3,616.74 to the Washington State Department of Revenue for Combined Excise Tax.

#### C. Resolution 715-20: Sale of Abandoned Vessels

**Commissioner Putney moved to adopt the Consent Agenda.**

Commissioner Petranek asked for correction to the spelling of Blaiklock and acronym PTMTA.

**Commissioner Petranek seconded the motion – with changes noted.**

**Motion carried by unanimous vote.**

**V. SECOND READING (00:06:28)****A. Resolution 714-20 Commission Meeting Procedures**

Commissioner Putney noted that in the past few years we have not had a second meeting in December due to holiday scheduling, which has caused some issues with finance, and suggested having a meeting explicitly on the Wednesday before Christmas, to be sure it didn't fall between holidays. He suggested a short meeting – consent agenda only – to allow for warrants to be approved and avoid late fees for bill payments.

A short discussion ensued as to when a meeting could be held at the end of the year to allow for bills to be paid. Commissioner Hanke noted that he would be on holiday on the Wednesday before Christmas, and suggested adopting the procedures as is, and adjust dates later.

Commissioner Petranek asked if a second public comment period at the end of the meeting could be added, with the note that they not be related to actions taken. She felt that after hearing the commission discuss certain agenda items, constituents might have a different view to put forward, and a second comment period at the end of the meeting would provide them with a time to do that. Commissioner Putney stated that public comments later in the meeting are confusing, and noted that comments could be made directly with commissioners after the meeting via email, phone, or in-person meetings. Commissioner Petranek agreed with this approach. Commissioner Hanke realized that he should have asked for public comments "related and not related to the agenda" at the beginning of the meeting when he asked for comments not related to the agenda; to remedy this, he asked for any further comments regarding the agenda today. (None were made.)

**Commissioner Petranek moved to approve Resolution 714-20.**

**Commissioner Putney seconded the motion.**

**Motion carried by unanimous vote.**

**VI. FIRST READING - none****VII. REGULAR BUSINESS (20:38)****A. Port Townsend Furniture Clinic Lease (00:20:38)**

Deputy Director Toews introduced a two-year lease including three one-year options with the Port Townsend Furniture Clinic at 308-A 10th Street, 1,000 square feet of manufacturing space without guaranteed parking associated with the building. The space is currently being rented by Tom Powell on a month-to-month basis, and used for his furniture repair and finishing business as well as office space. He has been a Port tenant in good standing at the same location since 2007.

**Commissioner Petranek moved to direct staff to proceed with this lease.**

**Commissioner Putney seconded the motion.**

**Motion carried by unanimous vote.**

**B. Development LOI: Port Townsend Aero Museum (00:23:00)**

Executive Director Pivarnik introduced potential plans for the Aero Museum to expand their footprint, and stated Museum Director Michael Payne had requested a new lease on Port property at 105 Airport Road, a site that has been problematic in the past because of its proximity to wetlands. Executive Director Pivarnik said that Mike took the step of doing a wetland delineation, and that the next step would be an update to the Airport Layout Plan, which will need input from the Federal Aviation Administration. Deputy Director Toews commented that if the commissioners accept the letter of intent, it will allow Mr. Payne to approach Jefferson County's Department of Community Development for a pre-application meeting. If successful, this would lead to a future lease amendment that would be brought before the commission. The museum was founded in

2001 and has operated continuously since 2008. Commissioners invited Payne to speak during the meeting, and he said the museum is unusual because it operates and restores antique aircraft, and young people play a significant role.

There was a short discussion about changes to the Airport Layout Plan, which could be rolled into one request to the FAA, and it was decided to move a more detailed discussion about these changes to a later date.

**Commissioners directed staff to proceed with the LOI.**

C. Quarter 4 preliminary Financials for the Port (00:33:08)

Director of Finance Berg presented this preliminary report by saying our 2019 operating revenues as compared to 2018 and last five years show a revenue trend that is doing very well – with 2019 almost \$400,000 more than the prior year and almost \$1 million from two years ago, with expenses staying steady. She told commission that next month she plans to provide a detailed list of all the capital expenditures in 2019. Commissioner Hanke asked what expenses were expected for 2020, and Director Berg reported that projected Operating Expenses for 2020 are \$5,114,823, and projected revenues are \$6.3 million.

D. Consider Ramp Fees for Fishing Tournament (00:38:10)

Executive Director Pivarnik reminded the commission that the Fishing Tournament was coming up on March 13, 14, and 15, and asked the commission if the Port should continue the past practice of waving ramp fees to promote tourism and economic development.

There was a short discussion including getting feedback from those who use the ramp who were present. The commissioners were encouraged to keep the ramp fees free for the tournament.

**Commissioner Hanke moved to approve the proposal to keep ramp fees free for the fishing tournament in March.**

**Commissioner Putney seconded the motion.**

**Motion carried by unanimous vote.**

VIII. STAFF COMMENTS (00:40:53):

Reporter Erickson commented that the calendar for commission meetings needs to be set for 2020. Commissioner Hanke suggested that we revisit the calendar on February 26, 2020, at the afternoon meeting.

Port Attorney Chmelik commented that on February 11 at 1:00 PM he would be holding the annual leasing seminar of Port staff at the Bellingham Airport Holiday Inn.

Deputy Director Toews mentioned that last week's preconstruction meeting regarding the JCIA runway project was delayed until tomorrow with Reid Middleton & Scarcella Brothers at 10:00 AM here in the Commission Building. They will confirm the preliminary project schedule, which anticipates that field work will conclude no later than June 26 with restriping to occur in Autumn 2020 (after the summer flying season). The Port will work with the Jefferson County Pilots Association to schedule a pre-construction meeting with pilots. Commissioner Putney asked about tree removal to obtain instrument approach, and Deputy Director Toews answered that removal of obstructions had occurred as a pre-condition to the FAA funding runway reconstruction.

Executive Director Pivarnik commented that engineers for the Point Hudson jetty project would be at the Public Workshop on February 12. He said that he would share the drawings from the engineers

with the Jetty committee and the commissioners. Robert D'Arcy, who is on this committee and was present, made the comment that the drawings he saw are exactly what the committee asked for: steel pilings, narrower than today and closer to the original design.

Executive Director Pivarnik asked if any of the commissioners planned to go to Port Day in Olympia, which is slated for next Tuesday, January 28. After a short discussion, it was suggested that since the legislative session is short, it would be more productive to invite our representatives to the Port for a tour after the session is over, since Port Day only affords five minutes with the legislators, and this would give us much more quality time with them.

#### IX. COMMISSIONER COMMENTS (00:54:58):

Commissioner Putney thanked everyone involved in the selection process for the new Executive Director. He was happy to see so many constituents stepping up and participating in both the invitation-only and the public events and offering advice.

Commissioner Petranek noted that at one count, at least 60 people showed up to the public event on a very bad evening for weather and when other competing events were happening. She said she appreciated the engagement of the community and is thankful for the feedback both at the event and afterwards in the form of letters.

Commissioner Hanke echoed these comments, and said that the whole selection process had gone well, and thanked everyone for a great process resulting in some impressive choices.

Commissioner Hanke clarified that the Executive Session is where the commissioners would get instructions from their lawyer and from Karras Consulting. Since the presentation by Karras was predicted to be a half-hour, Commissioner Hanke estimated that the Executive Session would take about an hour total, but might go longer. They would then reconvene and discuss candidates and their votes in the open public meeting.

#### X. NEXT PUBLIC WORKSHOP / REGULAR BUSINESS MEETING (00:58:09):

Wednesday, February 12, 2020: Workshop at 9:30; Meeting at 1:00 p.m.  
Port Commission Building, 333 Benedict Street, Port Townsend, WA

#### XI. Executive Session

Commission adjourned into Executive session at 2:00 PM, and planned to return at 3:00 in regular session.

*Evaluating the Qualifications of Applicants for Public Employment RCW 42.30.110 (1)(G)*

#### XII. Reconvened with possible decisions from Executive Session (01:00:53)

Commission reconvened from into Executive session at 3:32 PM.

Commissioner Putney began the discussion by stating that the process to hire a new Executive Director was a long one that began in September, and ended with these four excellent candidates. The vote has come down to two candidates: Eron Berg and Andy Haub. Commissioner Putney mentioned that after watching the Port over the years, he had a strong, clear picture of the qualities in a person it would take to lead the Port as Executive Director: someone who has worked as an executive with an elected board, and someone with credentials to be a peer with other leaders in Port Townsend and Jefferson County. After the IDD electoral win – a first in Washington State – Commissioner Putney thought that what is needed is someone who will work for the good of everyone for the preservation of the Port. He expressed that while both Berg and Haub are excellent candidates, Mr. Berg had been

on both sides of the commission-director dynamic, and is someone who would think outside the box and see opportunities that other candidates would not.

Commissioner Petranek spoke about her decision process: listening to constituents, going over the qualities sought in a new Executive Director, listening to the candidates' answers to questions and looking at their experience. She expressed that we are a special place that is very unique with most of our assets at or adjacent to the sea. She felt that the Port should be a leader in the area of sea level rise, since most of our economic development depends upon it, and Andy Haub is an expert in sea-level rise. She listed many qualities she wanted in a new executive director, and felt strongly that Andy Haub was the best candidate.

Commissioner Hanke stated that he felt all four candidates were very strong. Travis Matheson had roots in Port Townsend and demonstrated good management skills. Tony Warfield was a great port person. However, it came down to Eron Berg and Andy Haub, who both came from similarly sized communities, had great educational stories, and showed that they are good listeners and open to meeting with anyone to hear them out. Commissioner Hanke felt it was very important that we find someone who has been in the trenches, is inventive and has the ability to leverage the IDD money. He felt that Mr. Berg is that person.

**Commissioner Putney moved to send an offer letter to Eron Berg to be the next Executive Director of the Port.**

**Commissioner Hanke seconded the motion.**

There was a short discussion about whether or not there could be another interview of each of these two final candidates, due to new criteria raised in this session. However, the candidates were waiting for a decision, and the feeling among the commission was that the vote would not change after taking more time.

**A vote was taken, with Commissioners Hanke voting yes, Commissioner Putney voting yes with the codicil that he'd like it to be a unanimous vote because a split is not a good harbinger. Commissioner Petranek voted no. Motion carried by vote of 2 to 1.**

**Commissioner Putney moved to appoint Eron Berg as the next Executive Director of the Port with a salary of \$155,000 per year pursuant to the terms of the appointment letter dated January 22, 2020, and authorize the current Executive Director to execute the employment letter on behalf of the Port of Port Townsend Commission and forward to Mr. Eron Berg for his acceptance.**

**Commissioner Hanke seconded the motion. Commissioners Hanke and Putney voted yes; Commissioner Petranek voted no. Motion carried 2 to 1.**

**XIII. ADJOURNMENT:**

The meeting adjourned at 4:13 p.m., there being no further business to come before the Commission.

ATTEST:

\_\_\_\_\_  
Pamela A. Petranek, Secretary

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

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

# PORT OF PORT TOWNSEND

## AGENDA COVER SHEET

<b>MEETING DATE</b>	February 12, 2020
<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. Proposed Change Order to JCIA Runway Reconstruction Contract
<b>STAFF LEAD</b>	Eric Toews, Deputy Director
<b>REQUESTED</b>	<input type="checkbox"/> Information <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion
<b>ATTACHMENTS</b>	A. Informational Memo

# PORT OF PORT TOWNSEND

## INFORMATIONAL MEMO

**DATE:** 2/7/2020  
**TO:** Port Townsend Port Commission  
**FROM:** Eric Toews, Deputy Director  
**SUBJECT:** JCIA Runway 9/27 Reconstruction Project – Potential Bonus Provision for Early Project Completion

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**ISSUE:** Should the Commission authorize the Executive Director to proceed with a Change Order to Scarsella Brothers' construction contract to provide a monetary incentive for early project completion?

**BACKGROUND & DISCUSSION:** On October 9, 2019, the Port awarded the contract for Phase 3 of the JCIA Runway and Taxiway Reconstruction Project to Scarsella Brothers Construction. The Contract Documents for the project stipulate that the contractor is allowed a total of 42 calendar days of construction time to complete the project, not including the second coat of markings (2 days) which is not to be applied until after August 31, 2020. This period of performance is the "Contract Time". For each calendar day that work remains uncompleted after the Contract Time, \$3,000 per day would be deducted from the contract price (i.e., \$2,963,905) as liquidated damages.

The Contract Time does not include periods during which construction has been halted at the discretion of the Port. Specifically, under the Contract Documents, the Port has the authority to suspend work (wholly or in part) as it deems necessary due to unsuitable weather or other unfavorable conditions (e.g., saturated soil) beyond the contractor's control. Consequently, these Port initiated work suspensions would neither count against the Contract Time nor trigger the liquidated damages provision.

Scarsella Brothers has provided a construction schedule that anticipates project mobilization to commence on Monday, May 4, 2020, with completion of on-site construction activities (excluding the second coat of pavement markings) by Sunday, June 14, 2020 (i.e., 42 calendar days). The contractor's schedule is based on working ten (10) hour days, six (6) days per week to complete the work within 42 days. At the Preconstruction Meeting conducted on January 23<sup>rd</sup>, Port staff asked the contractor and sub-contractors whether an incentive would accelerate the time for project completion without sacrificing quality. Bob Scarsella, Principal, responded that the Contract Time might be slightly abbreviated, but that number of days reduced would be minimal (e.g., a few days), and that the Contract Time and project schedule were already very aggressive.

Early completion incentives are typically used in public works contracts where time plays a key role and/or where there are significant facility user costs that impact the community and local businesses. They are usually considered appropriate in the following situations:



- **Projects with a fixed date**, where finishing early might provide some limited benefit, but finishing late would cause severe damages (e.g., projects involving multiple/sequential contracts where finishing late would cause accompanying impacts to the subsequent project). These circumstances do not apply to the runway reconstruction project.
- **Projects with high impacts to facility users**, that require facility closures, use restrictions, etc. that would result in increased user costs and impacts. There is no question that the runway reconstruction will substantially inconvenience pilots and JCIA tenants. However, an incentive holds the potential to reduce the project length (at most) by only a few days and would, accordingly, be unlikely to substantially reduce impacts to pilots and tenants.
- **Projects with impacts to the local community**, where the impacts to the local business community due to facility closures are likely to be severe. As noted above, the runway reconstruction project will undoubtedly impact airport businesses and tenants; however, the impacts that might be avoided by way of an early completion incentive are not likely to be significant.

In addition to the foregoing, Port staff highlight the following concerns:

- **Cost/Benefit:** Even if an early completion incentive resulted in project completion a full week earlier than the Contract Time (i.e., 35 v 42 days), would the benefits provided to pilots and tenants justify the public expense (i.e., up to \$21,000)? Such an incentive would be the Port's sole responsibility and not reimbursable by the FAA or WSDOT grant agreements.
- **Quality Impacts:** Although the contract documents provide great detail with respect to project specifications to ensure quality, incentivizing an already compressed construction schedule holds the potential to lead to mistakes and unanticipated consequences. Staff is particularly concerned that an early completion incentive could encourage the contractor to work in sub-optimal conditions related to saturated sub-grade, and to be aggressive in claiming weather delay days.
- **Unanticipated Costs:** The FAA has indicated that any unanticipated costs that would flow from a more compressed schedule (e.g., MIRLs unintentionally damaged while speeding to achieve early completion) would not be FAA reimbursable costs. Thus, providing the incentive would add a level of uncertainty as to ultimate impacts/costs that does not currently exist.

**FISCAL IMPACT:** If authorized, a contract Change Order providing an early completion incentive would be estimated to require up to \$21,000 (e.g., \$3,000 per day under the 42 day Contract Time) not presently reflected in the Port's adopted 2020 budget.

**RECOMMENDATION:** None. The staff report is presented for Commission information and discussion.

**ATTACHMENTS:** None.

# PORT OF PORT TOWNSEND

## AGENDA COVER SHEET

<b>MEETING DATE</b>	February 12, 2020
<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) Pete Stein Lease
<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. Info Memo B. Term Sheet C. Pete Stein Lease Agreement

# PORT OF PORT TOWNSEND

## INFORMATIONAL MEMO

**DATE:** 2/12/2020  
**TO:** Port Commission  
**FROM:** Sue Nelson, Lease & Contracts Administrator  
**SUBJECT:** Pete Stein Lease Agreement

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**BACKGROUND:** Pete Stein was previously employed by Cunningham Ships Carpentry and most recently employed by, and later a tenant of, the Port Townsend Shipwrights Co-op. Since then, he started his own business building and repairing boats. Mr. Stein has built a reputation at Boat Haven as a reliable and accomplished craftsman.

**DISCUSSION:** The shop space is a 1,856-sf timber-frame structure, that includes a 1<sup>st</sup> and 2<sup>nd</sup> floor and a loft. The lease presented to the Commission would establish rate at inception of \$0.43/sf for the building, increasing to \$0.50/sf by the beginning of month 13.

Lease term is a two (2)-years, with three (3) one (1)-year options.

In the event Mr. Stein 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 expiration.

The proposed security deposit is equal to three (3) months' rent.

This lease would solidify Mr. Stein's presence at Boat Haven, helping to maintain Port Townsend's reputation as a home to artisans skilled in the art of wooden boat building and repair. Staff is pleased to have the opportunity to present this proposed lease to the Commission

**RECOMMENDATION:** Authorize the Executive Director to execute the attached lease with Pete Stein, a Washington State Sole Proprietor.

### **ATTACHMENTS**

- Summary of Key Terms
- Draft Port-Peter M. Stein Lease

**PORT OF PORT TOWNSEND:**  
**Summary of Key Terms – Peter M. Stein Building Lease**  
**(February 7, 2020)**

1. **TENANT:** Peter M. Stein, d/b/a Pete Stein, a Washington State Sole Proprietor
2. **PREMISES:** Building #1, 3109 Jefferson Street, Port Townsend, WA, at the Port's Boat Haven facility, comprising approximately 1,856 square feet of floor space.
3. **TERM:** Two (2) years, beginning on March 1, 2020 and ending on February 28, 2022. Option to extend the lease term by three (3) additional one (1) year terms. Notification to extend the Lease to be done in writing ninety (90) days prior to the end of the lease or any extended term.
4. **RENT:** Rent per square foot of \$0.43 at lease inception and increasing to \$0.50 by the beginning of month thirteen (13); CPI-U applied beginning in year 2 and each year thereafter in any extended lease term. Market rate adjustment may be applied at beginning of year 3, and every three years after.  
  
Months 1-6: March 1, 2020 – August 1, 2020: \$798.08 plus \$102.48 LHT = \$900.56 (\$0.43/sf)  
Months 7-12: September 1, 2020 – February 1, 2021: \$872.32 plus \$112.01 LHT = \$984.33 (\$0.47/sf)  
Month 13: Beginning March 1, 2021: \$928.00 plus \$119.16 LHT = \$1,047.16 (\$0.50/sf) + then current CPI-U + LHT
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 \$798.08 + LHT at the time of lease expiration, the rent in holdover status would be + 25% (\$199.52), or \$997.60 + LHT).
6. **USE OF PREMISES:** Industrial building space for building and repair of boats.
7. **SECURITY:** Three month's security + LHT would be required at lease inception (\$2,701.66). Because Lessee already has a deposit of \$1,619.20 on file with the Port, an additional \$1,082.46 would be required prior to execution of the lease.
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.

## PORT OF PORT TOWNSEND BOAT HAVEN BUILDING LEASE

**THIS LEASE AGREEMENT** made this \_\_\_\_ day of February, 2020, 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 PETER M. STEIN d/b/a PETE STEIN, a Washington State Sole Proprietor, 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 Jefferson County, State of Washington:

Approximately 1,856 square feet of marine industrial space in the building commonly known as Building 1, located at 3109 Jefferson Street, Port Townsend, WA 98368, at the Port's Boat Haven facility

hereinafter referred to as "the premises." The premises are depicted on Exhibit "A" which is attached hereto and which by this reference is incorporated herein as if fully set forth herein.

2. **TERM:** The term of this Lease is two (2) years, beginning March 1, 2020, and ending at midnight, February 28, 2022 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 90 days prior to end of the initial or any extended lease term.
3. **RENT:** Lessee agrees to the rental rate of \$0.43 per sq. ft. at lease inception, with step increases to reach \$0.50 per sq. ft. by the beginning of month thirteen (13) as follows:  
Months 1-6: March 1, 2020 – August 31, 2020: \$798.08 (43¢/sf) per month plus \$102.48 Leasehold Excise Tax (LET) = \$900.56  
Months 7-12: September 1, 2020 – February 28, 2021: \$872.32 (47¢/sf) per month plus \$112.01 LET = \$984.33  
Month 13: Beginning March 1, 2021: \$928.00 (50¢/sf) + then current CPI-U + LET  
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. 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-Bellevue, 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. **DEPOSIT:** Lessee shall deposit with the Port security in the amount of **Two Thousand Seven Hundred One Dollars & Sixty-Six Cents (\$2,701.66)**.<sup>1</sup> Lessee has an existing deposit of **One Thousand Six Hundred Nineteen Dollars & Twenty Cents (\$1,619.20)** currently on file with the Port. Accordingly, Lessee shall deposit an additional **One Thousand Eighty-Two Dollars & Forty-Six Cents (\$1,082.46)** in order to satisfy the requirements of this Paragraph 5 ("the additional deposit"). The deposit shall be held by the Port as security for Lessee's faithful performance of all 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.
6. **USE OF PREMISES:** Lessee shall use the premises for the purpose of boat repair and construction and associated office space and shall not use them for any other purpose 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. 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. **CONDUCT COVENANTS AND WARRANTIES:** In addition to the requirements of Paragraph 10 and Paragraph 22, below, Lessee specifically covenants and warrants to the Port as follows:
  - a. **Quiet Conduct.** The conduct of Lessee and such others for whom Lessee is responsible shall not, in any manner, disturb the quiet enjoyment of other

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<sup>1</sup> Required security for all Port leases is three (3) months (minimum + LHT, calculated as follows: \$798.08 per month x 3 = \$2,394.24; \$2,394.24 x 12.84% LHT = \$307.42; = \$2,394.24 + \$307.42 = \$2,701.66.

Tenants, invitees, or visitors, in or near where the Premises are located, including common areas.

- b. **Damage.** The conduct of Lessee and such others for whom Lessee is responsible shall not result in or cause destruction or damage to the Premises, or any part thereof including, but not limited to any and all common areas, or the property of other Tenants, their invitees, and visitors.
- 8. **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, stormwater fees and communications. WiFi and/or fiber services are not included in the rent.
- 9. **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. 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.
- 10. **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 or 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.
- 11. **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. Such written approval shall also include agreement for disposition of the improvements upon termination of this Lease.



- 12. 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.
- 13. 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.
- 14. 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.

15. **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. 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.
16. **LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW AND OTHER SIMILAR INDUSTRIAL INSURANCE SCHEMES:** For purposes of the indemnification provision set forth in Paragraph 15, above, and only to the extent of claims against Lessee by the Port under such indemnification provision, Lessee specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, The United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the parties hereto.
17. **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, b and c of this Paragraph 17 shall be met prior to inception of this Lease Agreement.

- 18. **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 18 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.
- 19. **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.
- 20. **HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT:** Lessee has examined the Hazardous Substance Warranty and Agreement, consisting of six (6) pages, which is attached as Exhibit "B" hereto and which by this reference is incorporated herein as fully set forth herein, and acknowledges full understanding of its obligations under said Hazardous Substances Warranty and Agreement.
- 21. **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.

- 22. 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.
- 23. 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.
- 24. 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.

- 25. 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 **sixty (60)** or more days before the termination date specified in the notice. The Lessee and the Port's Executive Director will agree to appropriate compensation to be provided Lessee for loss of use, cost of relocation, and/or cost of improvements. 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.
- 26. 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.
- 27. 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.

- 28. 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.
- 29. 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.
- 30. 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 24 hereof.
- 31. 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.
- 32. 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 11 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.

- 33. **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.
- 34. **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.
- 35. **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 which would or might constitute the basis for such a lien on the leased premises if not paid.
- 36. **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, WA 98368

To Lessee:  
PETE STEIN  
PO Box 302  
Chimacum, WA 98325  
Phone: (360) 302-2923

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.

37. **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.
38. **"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.
39. **CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
40. **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.
41. **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.

42. **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.

**43. 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.

Lease Agreement dated this \_\_\_\_ day of February 2020 as approved by the Port of Port Townsend Port Commission, on the \_\_\_\_ day of February 2020 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

THIS AGREEMENT HAS BEEN NEGOTIATED BETWEEN THE PARTIES AND CONTAINS A LIMITED WAIVER OF IMMUNITY UNDER TITLE 51 RCW, AN INDEMNIFICATION AND A RELEASE.

**LESSEE**

\_\_\_\_\_  
Peter M. Stein, Owner  
d/b/a Pete Stein

**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 Peter M. Stein 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**

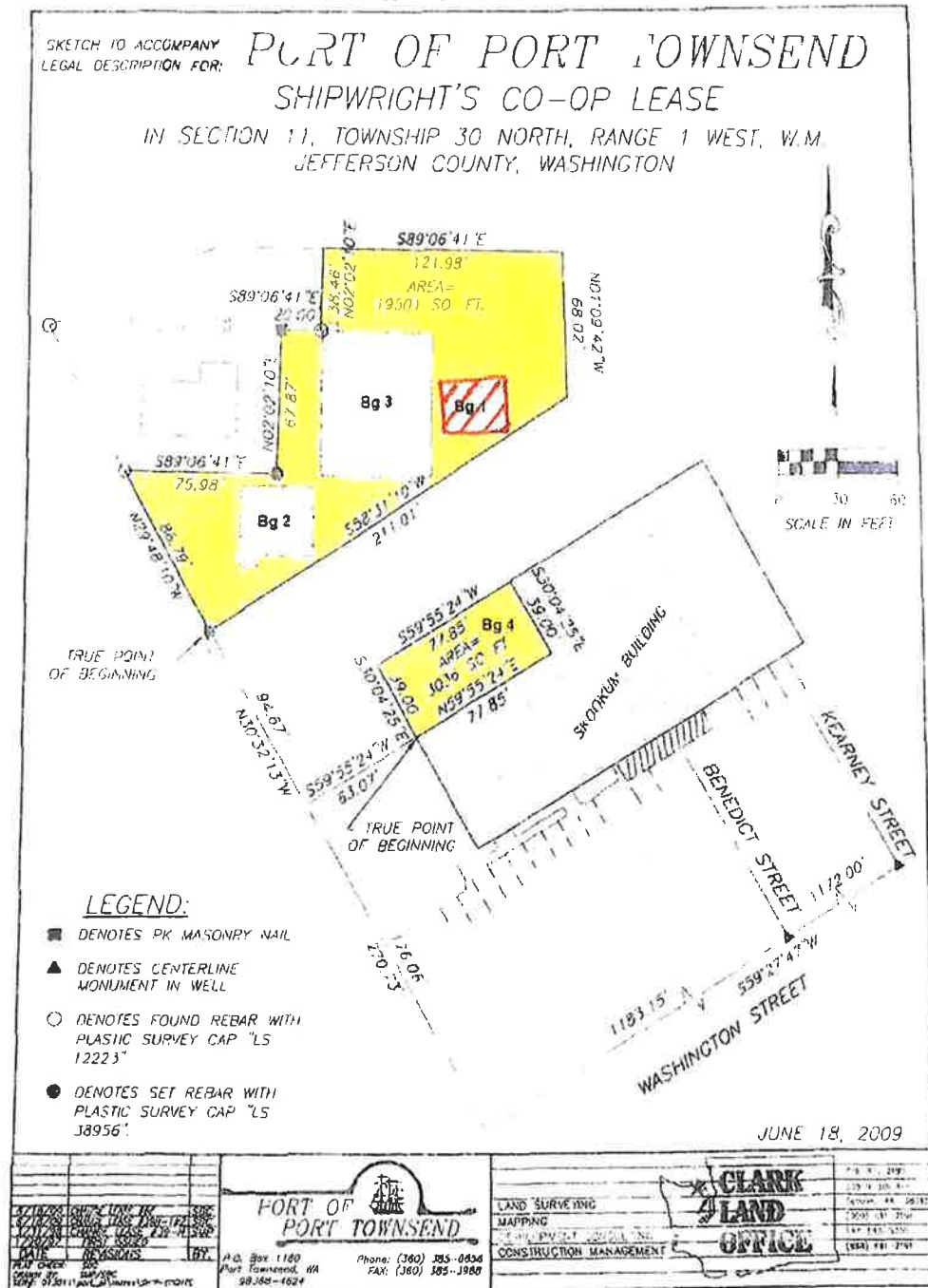
I certify that I know or have satisfactory evidence that Jim Pivarnik signed this instrument and that he is authorized to execute the instrument as Interim Executive Director of the Port of Port Townsend and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned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

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

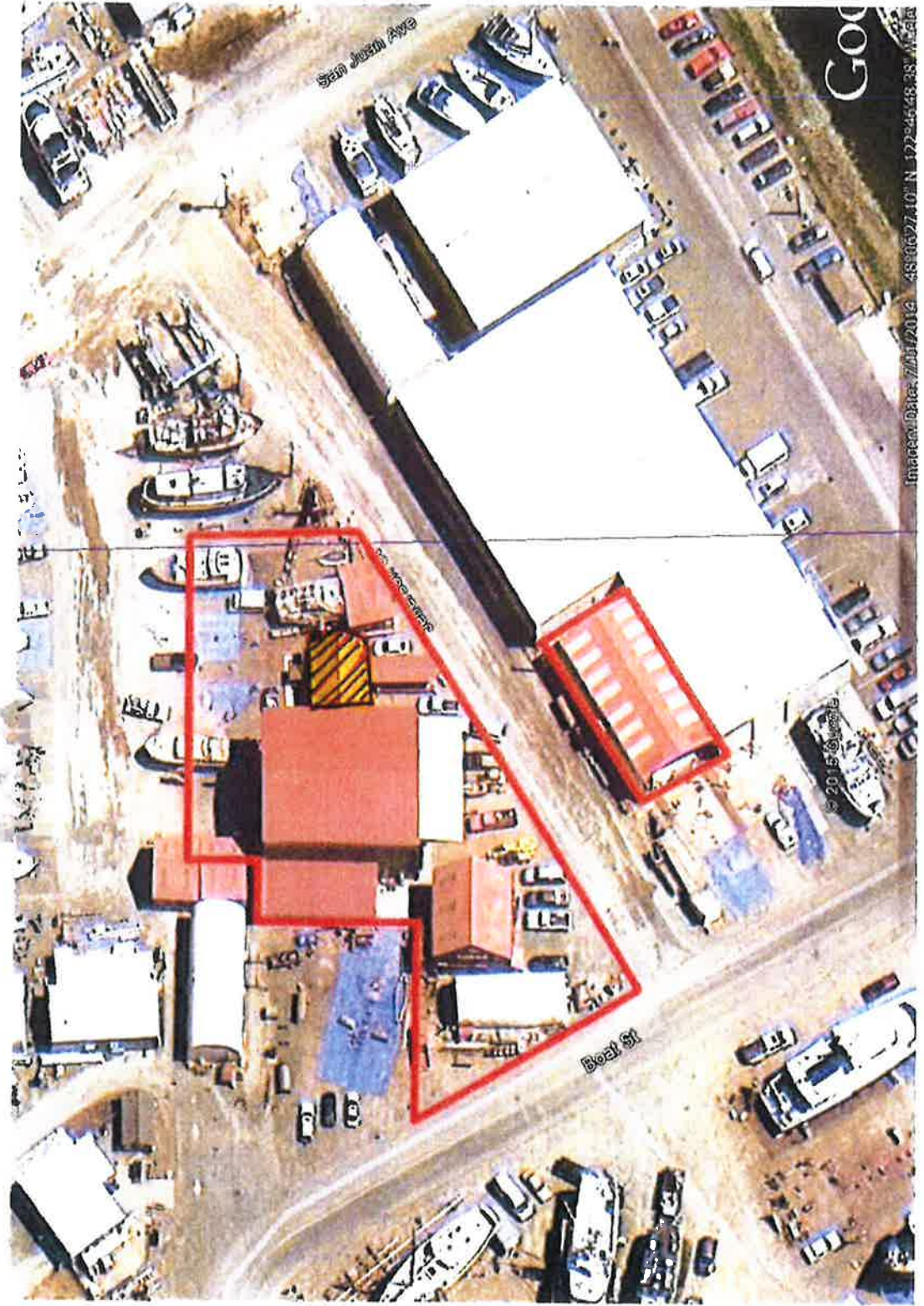
Signature of  
Notary Public: \_\_\_\_\_

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

**Pete Stein Lease, Exhibit 'A'**  
**Building #1, 3109 Jefferson Street**



*/// = Building #1 Leased Area*



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SUBJECT PHOTOGRAPHS

CLARKE, WHITE & VEENSTRA

FILE 2019-4-241-4



**Pete Stein Lease, Exhibit 'A'**  
**Building #1 3109 Jefferson Street**

**Table II Building Summary**

Identification	Age	Dimensions	Size	Total
<b>Building 1</b>	1985			
1st Floor		32 X 24	768	
2nd Floor		32 X 24	768	
Loft		32 X 10	320	
Building 1 Subtotal				1,856
<b>Building 2</b>	1991			
1st Floor		32 X 36	1,152	
2nd Floor		32 X 36	1,152	
Loft		32 X 12	384	
Building 2 Subtotal				2,688
<b>Building 3</b>	2004			
1st Floor		56 X 68	3,808	
2009 Addition		20 X 50	1,000	
				4,808
<b>Building 4</b>				
1st Floor	1987	39 X 77.85		3,036
Total				12,388

**Site Density:**

With a footprint area of 8,764 square feet, and a site area of 22,537 square feet, the development has a site coverage ratio of 38.9%. The remainder of the site is used for vehicle parking and yard storage for boats.

**Site Plan:**

The buildings on the north portion of the site face south to Jefferson Street with yard storage situated at the northeast corner of the site.

**Parking:**

Parking is available along the south elevation of the main buildings.

**Structural Construction:**

Buildings 1 and 2 are timber-frame structures with board and baton exterior siding. Building 3 is a steel-frame structure with metal exterior walls and Building 4 is a wood-frame structure with metal exterior walls and roof systems.

**Ceiling Clear Height:**

The clear height in the two, older, wood-frame structures is from 10-to-12 feet. The clear height of the larger, steel-frame structure is 36 feet, and 12 feet within the 2009 addition. The

# PORT OF PORT TOWNSEND

## AGENDA COVER SHEET

<b>MEETING DATE</b>	February 12, 2020
<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. C. Capital Projects Progress Reports
<b>STAFF LEAD</b>	Eric Toews, Deputy Director
<b>REQUESTED</b>	<input checked="" type="checkbox"/> Information <input type="checkbox"/> Motion <input type="checkbox"/> Action <input type="checkbox"/> Discussion
<b>ATTACHMENTS</b>	A. Capital Port Projects Progress Reports: 1. WDFW Air Quality Improvements (ongoing) 2. JCIA Runway Reconstruction (ongoing) 3. Boat Haven Workyard Resurfacing (ongoing) 4. Point Hudson Jetty (South) Renovation (ongoing) 5. Boat Haven Main Breakwater Repairs (new)



## Capital Port Projects Progress Report

①

**Project Name:** 375 Hudson St. – WDFW Air Quality Improvements 2019

**Quarter 4 - 2019**

### Report criteria:

- ☒ Estimated project cost exceeds Executive Director authority (\$25,000), and will require over 90 days to complete
- ☐ Project was approved by Commission for other reasons (*if checked, mention reason in Scope*)

Estimated start period: *May 2019*

Actual start period: *May 2019*

Estimated completion period: *November 2019*

Revised completion period: *February 2020*

Scope: (*to include need and priority*):

*This project is required under the terms of the lease agreement entered into by the Port with the Washington State Department of Wildlife in April of this year. The lease required installation of an air exchange system by May 31, 2019 in order to mitigate creosote odors throughout their premises (note: not the entire structure). However, the agreement was not executed until late April, and an engineer was not retained to prepare the bid specifications until May 1st. The Soon thereafter, the boiler in the hospital building unexpectedly failed. This unit provides heat for the wall mounted radiators throughout the building. Because of the boiler's failure, the scope the bid set was revised to incorporate both a "base bid" for the dedicated outdoor air system (DOAS) to serve WDFW's premises, as well as an "Alternate Bid #1" which would add two split system heat pumps to provide both heating and cooling to the entire building (including US Customs & Border Protection). Bids were returned on September 27, 2019, with Air Flo Heating identified as the lowest responsible and responsive bidder. However, Bid Alternate #1 was beyond the Port's financial capacity, and the Port proceeded with award of the base bid (ventilation only) in conjunction with replacement of the existing boiler (under a separate contract). The contract was awarded following the Commission's 10/9/19 meeting. Permits for the project to proceed required more time than was originally anticipated (Historic Preservation Code review); additionally, the DOAS unit is custom, and there was a substantial lag time between ordering the unit and its delivery. The contractor anticipates project completion by the end of February 2020.*

List of Permits required, box checked if obtained:

- ☒ Certificate of Approval – Historic Preservation Code Compliance
- ☒ Mechanical Permit

Permit notes, as applicable: In addition to the above, it was necessary to provide an engineer's letter of opinion to the City's Development Services Department that the structural framing of the building was robust enough to support the 700 lb. weight of the DOAS unit.

List of Funding Sources, box checked if secured:

☒ Net Operating Income

Percentage project completion: *The project is 90% complete. It is anticipated that the improvements will be completed and operational by the end of February 2020.*

Progress narrative (on schedule, on budget, challenges, savings, etc.):

*The project schedule has been delayed due to: a) time needed to negotiate and execute the new lease agreement with WDFW (late April of 2019); b) failure of the boiler that provides hot water to the radiators located throughout the building; c) Historic Preservation Code compliance; and d) lead time to manufacture the custom DOAS unit. The failure of the boiler, in particular, necessitated re-evaluating the project scope. Thus far, \$15,836 has been expended to complete the bid specification. Air Flow Heating's bid for procurement and installation of the dedicated outdoor air system (DOAS) is \$85,146.66. Total funding identified in the Port's adopted 2019 capital budget was \$100,000.*

External Consultant/Engineer/Contractor cost to-date: \$76,333

Internal (chargeable) staff cost to-date: \$1,209

## Capital Port Projects Progress Report

②

Project Name: 2017-2020 JCIA Runway Rehabilitation/Reconstruction

Quarter 4 - 2019

### Report criteria:

- ☒ Estimated project cost exceeds Executive Director authority (\$25,000), and will require over 90 days to complete
- ☐ Project was approved by Commission for other reasons (if checked, mention reason in Scope)

Estimated start period: *June 2017*

Actual start period: *June 2017*

Estimated completion period: *September 2019*

Revised completion period: *October 2020*

Scope (to include need and priority):

*This project is a high priority; Phases 1 and 2 were 90% FAA funded initiative; The majority of Phase 3 (Runway Reconstruction) is 100% FAA funded, with a small portion (Taxiway Connector) 90% FAA funded. The project is reflected in the Port's 2014 Master Plan Update as a high priority and included in the Washington State Capital Improvement Plan (SCIP) and the FAA's Airport Capital Improvement Plan (ACIP). Phase 1 of the project involved pre-design, environmental review, development of an obstacle plan, and 60% engineering design; Phase 2 of the project (now complete) involved 100% design, and bid specifications; Phase 3 involves bidding, contractor selection, preconstruction submittals, and reconstruction of the main runway and taxiway connector. Scarsella Brothers Construction has been identified as the responsible and responsive low bidder, and staff have requested Commission authorization to award both the construction contract (to Scarsella Brothers) and the Construction Administration Contract (to Reid Middleton). Following execution of contract documents, a Notice to Proceed was issued and Reid-Middleton and Port staff conducted a Pre-Construction meeting with the contractor on January 23, 2020. Field work will commence as soon as weather conditions permit in the spring of 2020, with mobilization slated to commence on Monday, May 4, 2020. The project will be substantially complete by the end of June 2020. Thereafter, paint re-striping will occur (no earlier than September); Reid Middleton will then prepare the final project closeout documents (by autumn of 2020).*

List of Permits required, box checked if obtained:

- ☒ Pre-Application Conference with Jefferson County completed in February 2019
- ☒ Stand Alone Stormwater Permit

Permit notes, as applicable: *Required permits and special reports from Jefferson County include a Construction Stormwater Permit, Cultural Resources Survey, and updated Wetland Report (no SEPA review or building permits are required), and a road access permit required from WSDOT for construction access.*

## Capital Port Projects Progress Report

Project Name: 2017-2020 JCIA Runway Rehabilitation/Reconstruction

Quarter 4 - 2019

②

List of Funding Sources, box checked if secured:

Phases 1 & 2

☒ FAA – 90% of approved costs for Phases 1 & 2

☒ WSDOT – 5% Phase 1 only

Phase 3

☒ FAA 100% - Phase 3 – Runway Only

☒ FAA 90% - Phase 3 – Taxiway Connector

☒ WSDOT 5% - Phase 3 – Taxiway Connector

☒ Net Operating Income

### Percentage project completion:

*Overall, project is 75% complete. All design and engineering is complete, as is the bid process and identification of the lowest responsible and responsive bidder; preconstruction submittals have been provided by the contractor; a community/pilots' meeting is scheduled for February 26, 2020 to discuss the project; runway/taxiway construction work is anticipated to occur between May 4 and June 26, 2020.*

Progress narrative (on schedule, on budget, challenges, savings, etc.):

*The project schedule was delayed to allow the FAA to complete its review of design documents, and Phase 3 – Reconstruction (field work) pushed forward to the spring of 2020. Phases 1 and 2 of the work were completed under fixed price contracts negotiated with the Port's Airport Engineer (Reid Middleton) following the preparation of Independent Fee Evaluations (IFE) to ensure their fairness. Combined, Phases 1 and 2 (engineering and bid specifications), will be completed for approximately \$720,000. The final engineer's estimate of probable construction cost was \$3,491,589. However, the low bid from Scarsella Brothers is \$2,963,905. The fee for Contract Administration has been established (following an IFE) at \$339,600. Thus, the "all in" hard and soft costs for Phase 3 will be approximately \$3,303,505. The overall project cost (i.e., including prior phases) is not expected to exceed \$4,023,505. There is no Port match required for the Runway portion of Phase 3; however, the taxiway connector is being funded via a standard Airport Improvement Program (AIP) grant at 90%, a standard WSDOT grant at 5%, and a Port match requirement of 5%. The Port's total share for Phase 3 under this "split grant" approach (both for construction and Construction Administration), is not expected to exceed 5% of the taxiway connector portion of the project (less than \$10,000).*

External Consultant/Engineer/Contractor cost to-date: \$721,577

Internal (chargeable) staff & permitting costs to-date: \$27,585

## Capital Port Projects Progress Report

③

**Project Name:** 2019 Boat Haven Workyard Resurfacing

**Quarter 4 - 2019**

### Report criteria:

- ☒ Estimated project cost exceeds Executive Director authority (\$25,000), and will require over 90 days to complete
- ☐ Project was approved by Commission for other reasons (*if checked, mention reason in Scope*)

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Estimated start period: June 2019 (bid set prepared, invitation to bid published; Unit Priced Contract for up to three years)

Actual start period: Bid opening July 2, 2019; bid award to Seton Construction; July 24, 2019, Work Order #1 (2019 work) finalized, schedule for work established; principal work conducted during the week of September 23, 2019; Work Order #1 substantially complete; close out of Work Order #1 is in process - awaiting release from Department of Revenue and Department of Labor and Industries.

Estimated completion period: 9/20/19

Revised completion period: 10/31/19

Scope (to include need and priority):

*Re-graveling of the Workyard areas at Boat Haven remains a high priority and is necessary to both improve and maintain the Workyard surface for customers, and to remove/cap soils and sediments containing high concentrations of regulated substances (e.g., zinc and copper). This project is part of an ongoing effort to remain in compliance with the Boatyard General Stormwater Permit administered by the Washington State Department of Ecology.*

*The work this season involved scarification of the existing surface; excavation to transition and blend existing edges of pavement and concrete structures with new grade of gravel surface; furnishing, spreading and compacting new rock surfacing; erosion control provisions; and traffic control.*

List of Permits required, box checked if obtained:

*N/A – No permits are required for this work.*

List of Funding Sources, box checked if secured:

☒ Net Operating Income

Percentage project completion: *This project does not lend itself to reporting in this manner, although Work Order #1 is now 100% complete.*

Capital Port Projects Progress Report

Project Name: 2019 Boat Haven Workyard Resurfacing

Quarter 4 - 2019

③

Progress narrative (on schedule, on budget, challenges, savings, etc.):

*Please see narrative above. The invitation to bid was published in June of 2019; the bid opening occurred on July 2, 2019. Authorization to award the contract is being requested at the July 10 regular meeting. The contract was awarded to Seton Construction during the week of July 22 following the Port's due-diligence inquiry. Thereafter, staff coordinated with the Contractor to schedule and complete the work; Work Order #1 was substantially completed during the week of September 23; some limited additional re-graveling of travel ways in the Shipyard were completed between by the end of October.*

External Consultant/Engineer/Contractor cost to-date: \$44,473

Internal (chargeable) staff cost to-date: \$180

## Capital Project Progress Report

Project Name: Point Hudson Jetty (South) Renovation

Quarter 4 - 2019

④

### Report criteria:

- ☒ Estimated project cost exceeds Executive Director authority (\$25,000), and will require over 90 days to complete
- ☐ Project was approved by Commission for other reasons (if checked, mention reason in Scope)

Estimated start period: *January 2019*

Actual start period: *April 2019*

Estimated completion period: *September 2019*

Revised completion period: *February 2022*

Scope (to include need and priority):

*This project is perhaps Port's highest capital priority due to the importance of Point Hudson (broadly) to the community's economic vitality. The existing structure is severely compromised and in need of complete renovation or replacement in the near term in order to maintain continued use of the Point Hudson Marina. The scope of the current project involves the replacement of the entirety of the 258-foot long South Jetty. The project is being completely redesigned and re-permitted. A feasibility analysis of various rehabilitation/replacement options, along with recommendations provided by a citizen stakeholder group convened by the Port late last year, has resulted in the identification of a "preferred alternative" design. The design calls for demolition and removal of the existing structure and replacement with a new structure similar in concept to the original 1934 design using modern materials (i.e., steel batter-piles, walers and pile-top bracing surrounding a granite quarry spall core). The design anticipates re-installation of a pedestrian walkway and viewing platform on the re-constructed capable of accommodating a future walkway.*

List of Permits required, box checked if obtained:

☐ \_\_\_\_\_

☒ *No permits for the redesigned project have been obtained at the time of this writing (2/6/2020)*

Permit notes, as applicable: Because the project is being entirely redesigned, the following permits must be obtained:

- Aquatic Land Use Authorization
- Building Permit
- Dredge/Fill Permit (Section 10/404 or 404)
- Endangered Species Act Compliance (ESA – formal consultation with the National Marine Fisheries Service (NMFS))
- Hydraulics Project Approval (HPA)
- National Environmental Policy Act (NEPA) compliance

- State Environmental Policy Act (SEPA) compliance
- Water Quality Certification (Section 401)
- Shoreline Substantial Development Permit Exemption

*In May of 2019, Port was successful in obtaining a \$150,000 Public Infrastructure Fund (PIF) grant from Jefferson County to support “soft costs” associated with re-permitting and re-engineering the project. Concurrent with the Port’s PIF application in early 2019, the Port sought approval from the Project Review Committee (PRC) of the Capital Projects Advisory Review Board (CPARB) of the State Department of Enterprise Services to use the “general contractor/construction manager” (GC/CM) alternative contracting procedures set forth in RCW 39.10 for the project. The Port pursued the authorization to use this process in order to take advantage of the flexibility it offers to work directly with a contractor in planning, managing, and implementing this complex project. In late March the PRC denied the Port’s request, and the Port has since then proceeded using the traditional design/bid/build method of procurement. Accordingly, the Port entered into a standard Professional Services Agreement with Mott MacDonald in April of 2019 to advance the engineering design. During the Commission’s July 10, 2019 regular meeting, a contract amendment was authorized to allow the design to proceed from 30% to 100% and project bid on the South Jetty project. A pre-application consultation is being arranged with the United States Army Corps of Engineers (USACOE) and the National Marine Fisheries Service (NMFS) to identify permitting agency concerns associated with the preferred alternative recommended by the citizen stakeholder group. Due to the uncertainty of the formal consultation process and potential mitigation that may be required by the National Marine Fisheries Service (NMFS), permitting is unlikely to be completed until fall of 2020 or winter of 2021. Accordingly, it is expected that reconstruction of the South Jetty would not be likely to occur within the 2021-2022 “in-water work window”. As has been noted previously, an extension to the Port’s existing BIG Tier 2 grant has been obtained (i.e., until 6/30/21).*

List of Funding Sources, box checked if secured:

- ☐ Boating Infrastructure Grant (BIG) - Seeking authorization through RCO to re-appropriate funds secured in 2015 from the US Fish and Wildlife Service for the redesigned project
- ☒ Public Infrastructure Fund (PIF) Grant of \$150,000 for engineering/permitting soft costs
- ☐ Bond issuance
- ☐ Port General Fund Reserves

Percentage project completion: *The redefined project is at approximately the 30% design stage.*

**Progress narrative (on schedule, on budget, challenges, savings, etc.):**

*A combination of factors has affected project progress: change in the method of procurement (i.e., GC/CM to design/bid/build); feasibility analysis of the repair/replacement alternatives; and obtaining stakeholder and community support for the preferred alternative design. However, taking the time to carefully evaluate and obtain wide support for the design is important to efficiently move the project forward to final design, expedite permitting, and increase the likelihood of aligning funding*



*partners. Moreover, it is still expected that the project will be designed, engineered and permitted in time for the 2021-2022 construction season.*

*Finally, it should be noted that the stakeholder committee has voiced support for expanding the scope of the project to include design, engineering and permitting of the North Jetty as well as the South, to facilitate efficiency of effort and assist in project funding efforts. Staff agree with the stakeholders. Accordingly, we anticipate bringing a proposed contract amendment forward to the Commission in Q2 2020 to ensure adequate resources to design and engineer the complete project (i.e., South and North).*

External Consultant/Engineer/Contractor cost to-date: \$41,835

Internal (chargeable) staff cost to-date: \$3,410

## Capital Project Progress Report

⑤

**Project Name:** Boat Haven Main Breakwater Repairs

**Quarter 4 - 2019**

### Report criteria:

- ☒ Estimated project cost exceeds Executive Director authority (\$25,000), and will require over 90 days to complete
- ☐ Project was approved by Commission for other reasons (*if checked, mention reason in Scope*)

Estimated start period: *April 2019*

Actual start period: *April 2019*

Estimated completion period: *October 2019*

Revised completion period: *October 2020*

### *Scope (to include need and priority):*

*The east portion of the Main Breakwater at Boat Haven (originally constructed in 1935) sustained considerable damage during a storm event on December 20, 2018. The damage is similar in nature and scope to storm damage that occurred in 2016 which was repaired in 2017. The work is focused on repairs to the south face of the breakwater and will include the following: excavation and spreading of sand (120 cu. yds.); placement of geotextile material within the excavated voids (620 sq. yds.); placement of 64 tons of permeable ballast within the voids; placement of 225 tons of quarry spalls; placement of 480 tons of 3 man rock; placement of 735 tons of 4 and 5 man rock; and revegetation of the top of the breakwater upon completion.*

*The Main Breakwater is critical infrastructure protecting the Boat Haven Marina. Accordingly, repairing this storm damage is among the Port's highest priority capital projects.*

List of Permits required, box checked if obtained:

- ☒ *The US Army Corps of Engineers has received a Letter of Concurrence from the US Fish and Wildlife Service.*

Permit notes, as applicable: *The following permits must be obtained:*

- Dredge/Fill Permit (Section 10/404 or 404)
- Endangered Species Act Compliance (ESA – formal consultation with the National Marine Fisheries Service (NMFS))
- Hydraulics Project Approval (HPA)
- State Environmental Policy Act (SEPA) compliance
- Water Quality Certification (Section 401)
- Shoreline Substantial Development Permit Exemption

List of Funding Sources, box checked if secured:

- ☒ Port Boat Haven Reserves
- ☒ Port Insurance (60% of project costs are anticipated to be covered by Enduris)

Percentage project completion: *The project is at approximately the 50% stage. It is designed, engineered, bid, and the contract awarded; permit applications have been submitted, and the Port now awaits permit issuance; once in hand, the construction schedule will be clarified with American.*

Progress narrative (on schedule, on budget, challenges, savings, etc.):

*Bids were returned for this project on September 19, 2019. American Construction was identified as the lowest responsible and responsive bidder and satisfied the Port's due diligence inquiry. On October 7, 2019, the Army Corps of Engineers (USACE) informed the Port that the National Marine Fisheries Service (NMFS) would require preparation of a Biological Assessment (BA) prior to completion of the consultation process. On October 9, 2019, the Commission authorized the Executive Director to award the repair contract to American Construction, contingent upon work not proceeding until all necessary permit authorizations were obtained.*

*On October 1, 2019 the Port executed a personal services contract with Sea-Run Consulting to prepare and submit the BA and all necessary permit applications. NMFS is presently under-staffed, and the Port's consultant has indicated that it is very unlikely that the required letters of concurrence from NMFS will be issued (allowing the USACE to sign off on the project) until after the in-water work window closes on 2/15/2020. WDFW (via the Hydraulics Permit Application (HPA)) requires that all in-water work be completed by that date. The window will not reopen until 7/15/2020.*

*The Notice of Award has been issued to American, and we are now awaiting permit issuance as a condition precedent to providing a Notice to Proceed to the contractor. Until all permits have been issued, and the construction schedule has been confirmed with American, precisely when the work will occur in the summer/autumn of 2020 is unknown.*

External Consultant/Engineer/Contractor cost to-date: \$7,757

Internal (chargeable) staff cost to-date: \$2,155