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**Port of Port Townsend  
1<sup>st</sup> Monthly Regular Meeting Agenda  
Wednesday, April 8, 2015, 1:00 PM  
Port Commission Building  
333 Benedict Street, Port Townsend, WA**

- I. Call to Order / Pledge of Allegiance
- II. Approval of Agenda
- III. Consent Agenda
  - A. Approval of Meeting Minutes – March 25, 2015.....1-3
  - B. Operations Reports – March 2015.....4-6
  - C. Approval of Warrants
- IV. Public Comments (not related to Agenda)
- V. Second Reading (Action Items)
  - A. Industrial Development Corporation (IDC) Application Form.....7-10
  - B. New Day Fisheries Lease.....11-30
  - C. EV (Electric Vehicle) Tourism.....31
  - D. Engineer Applicants.....32
- VI. First Reading (discussion only)
  - A. Non-compliance Fee.....33
  - B. Restroom Open Hours.....34
- VII. Potential Immediate Action Items (unanimous Commission approval required)
- VIII. Staff Comments
- IX. Public Comments
- X. Commissioner Comments
- XI. **Next Meeting:** Wednesday, April 22, 2015 at 5:30 PM in the Port Commission Building, 333 Benedict Street, Port Townsend, WA.
- XII. Executive Session (if called)
- XIII. Adjournment

**PORT COMMISSION MEETING– March 25, 2015**

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

Present: Commissioners – Tucker, Clinefelter and Hanke  
Executive Director – Crockett  
Deputy Director - Pivarnik  
Auditor – Khile  
Attorney – Goodstein  
Minutes – Nelson

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Tucker called the meeting to order at 5:30 PM.

II. APPROVAL OF AGENDA:

Additional agenda item proposed: **VI-First Reading, Item D: New Day Fisheries Lease.**

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

**Commissioner Clinefelter seconded the motion.**

**Motion carried by unanimous vote.**

III. CONSENT AGENDA:

A. Approval of Meeting Minutes – March 11, 2015

Approval of Public Workshop Minutes – March 11, 2015

B. Approval of Warrants

Warrant #054290 through #054301 in the amount of \$62,943.88 for Payroll & Benefits

Warrant #054302 through #054340 in the amount of \$46,892.17 for Accounts Payable

Electronic Debit to Union Bank in the amount of \$3,738.28 for WA State Dept. of

Revenue Combined Excise Tax Return for February 2015

Electronic Debit to Union Bank in the amount of \$16,585.00 for Payroll Taxes

Electronic Debit to Kitsap Bank in the amount of \$975.00 for Deferred Comp

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

**Commissioner Hanke seconded the motion.**

**Motion carried by unanimous vote.**

IV. PUBLIC COMMENTS (Not related to agenda) (1:21):

Ron Hayes posed a question on waitlist figures.

V. SECOND READING (Action Items):

A. Engineer Applications (5:00):

Mr. Crockett reported that two applications were received - both from well-qualified applicants. Interviews will be conducted next week and selection to follow soon after.

VI. FIRST READING (Discussion Only):

A. Baird Boat Co. – Additional Ground Lease (8:00):

Mr. Pivarnik reported staff has been working with Baird Boat Co. and Haven Boatworks about adding a small area of land to their current lease. He explained that Ernie Baird is the holder of the lease and Haven subleases from him. Haven is proposing to build a new building on an additional 20' more of land. They have been working on the building permit process and are asking for commission approval to lease this additional space.

**Commissioner Hanke moved this item for Immediate Action (VII, Item A.)**

Commissioner Tucker asked further questions.

Mr. Pivarnik asked Ernie Baird if he would like to comment.

Mr. Baird thanked the commission and staff for their cooperation over the years. He explained that Haven had purchased Shoreline Marine Diesel and this new building will allow them to bring all their operations to one site. He added this would free up the old Shoreline Marine building for another tenant. Mr. Baird explained he plans to pick up permits on Monday and that the contractor is "ready to roll".

**Commissioner Clinefelter seconded the motion on the table to move this for immediate action.**

**Motion carried by unanimous decision.**

**Commissioner Tucker moved to approve the land addition to the Baird Boat Lease as presented.**

**Commissioner Hanke seconded the motion.**

**Motion carried by unanimous vote.**

Mr. Baird then pointed out that the fabric covered shed used for sand blasting, which is adjacent to his lease, may be a problem. He explained those who sandblast there follow OSHA rules, but OSHA rules do not address how the sand blasting affects neighbors of this operation. He added Haven employees are adversely affected by the noise and if operations increase, he would pursue mitigation to resolve this matter.

B. EV (Electronic Vehicle) Tourism Discussion (19:53):

Mr. Pivarnik reminded he and Commissioner Tucker have been attending Jefferson Energy Lunch meetings. The Port has been asked to help bring EV Tourism to our city. This would require no Port funding, and Mr. Pivarnik explained Port staff would research available funding, including grant writing and possible funding from electronic vehicle manufacturers. He asked the commission if they wish Port staff to work on finding ways to bring more charging stations here.

Commissioner Tucker added the outcome of EV Tourism is “energy (created) economic development” and that he is looking for commission consensus before pursuing this.

Further discussion amongst the commission and staff included whether the Port can charge for use of these charging stations (yes); how much staff time would be involved (approximately 150 hours in a six-month period); that these are “fast charge” stations – charging cars in half an hour as compared to five hours; that these require 3-phase power; and, how many stations would the Port be looking to install (2).

C. North Olympic Development Council (NODC) (27:32):

Mr. Crockett explained the PDD and RC&D both dissolved, and as a result, the NODC was formed. He briefly discussed a strategic planning retreat he attended last week, where they are working on a mission statement. He added he would attend the NODC meeting tomorrow where they will review the retreat results.

D. New Day Fisheries Lease (28:49):

Mr. Pivarnik informed that New Day Fisheries has been on a month-to-month lease for over a year. Staff drafted a lease that Scott Kimmel is ready to sign pending commission approval. This lease includes a license agreement for use of the pier, and a ten-year with a ten-year option building and land lease.

VII. POTENTIAL IMMEDIATE ACTION ITEMS):

A. Baird Boat Co. – Additional Ground Lease  
(See First Reading, Item A)

VIII. STAFF COMMENTS (21:15):

Mr. Crockett discussed RCO’s response on commercial use of the boat ramp.

He also informed of a meeting he had on the IDC with City Manager Timmons and Team Jefferson Director Quinn. He added there is an additional business expressing interest in the IDC besides Pete Langley.

Last, Mr. Crockett stated he is attending the FAA conference in Seattle April 6-8 and would be absent from the April 8 Commission meeting. He suggests rescheduling the public workshop. Staff would like David Goldsmith to give a briefing at the workshop prior to the next retreat and Mr. Goldsmith is out of town until mid-April.

IX. PUBLIC COMMENTS:

X. COMMISSIONER COMMENTS (43:26):

Commissioner Hanke asked to remember Diane Schostak of Olympic Peninsula Tourism who recently passed away.

XI. NEXT MEETING/WORKSHOP: Next regular meeting will be held Wednesday, April 8, 2015 at 1:00 PM in the Port Commission Building, 333 Benedict St, Port Townsend. Public Workshop date TBD.

XII. EXECUTIVE SESSION:

XIII. ADJOURNMENT:

The meeting adjourned at 6:14 PM there being no further business to come before the Commission.

ATTEST:

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Stephen R. Tucker, President

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Peter W. Hanke, Secretary

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Brad A. Clinefelter, Vice President

# BOATHAVEN OPERATIONS REPORT/MOORAGE

MONTH: MARCH                      2015                      DATE: 4/2/2015

MONTHLY PERMS: 354

MONTHLY GUESTS: 23

# OF SLIPS BY SIZE	OCCUPIED	empty	% occ.
25' <span style="float: right;">35</span>	34	1	97%
27' <span style="float: right;">11</span>	10	1	91%
30' <span style="float: right;">105</span>	103	2	98%
35' <span style="float: right;">24</span>	23	1	96%
40' <span style="float: right;">44</span>	43	1	98%
45' <span style="float: right;">41</span>	39	2	95%
50' <span style="float: right;">32</span>	31	1	97%
OVER 52' <span style="float: right;">7</span>	7	0	100%
TOTAL: <span style="float: right;">299</span>	287	9	AVG: 96%

LINEAR SPACE/FT	OCCUPIED	% OCCUPIED
LIMITED ACC. <span style="float: right;">1455</span>	1440	99%
TOTAL: <span style="float: right;">3806</span>	3656	AVG: 98%

	CURR	PREV MO	YTD
NIGHTLY GUESTS:	271	188	591
CREDIT SYSTEM:	23	24	72
TEMP TIE UP:	6	2	9
FREE NIGHTS:	0	3	3
PTYC:	8	7	17
RAMP/DAILY:	53	23	119
RAMP/ANNUAL:	49	52	172
RAMP NOT PAID:	START 3-1-15		4

WAIT LISTS	
25' PLEA:	7
27' PLEA:	0
30' PLEA:	39
35' PLEA:	35
40' PLEA:	43
45' PLEA:	21
50' PLEA:	18
OVER 52':	8
OVERWID	0
30' COMM.	0
40' COMM.	0
50' COMM:	1

TOTAL OCCUPANCY %: 97%

# Port of Port Townsend

## POINT HUDSON MARINA & RV PARK

### MONTHLY OCCUPANCY REPORT

2015

### & 5 YEAR COMPARISON

MARINA NIGHTLY GUEST NIGHTS											
	2011		2012		2013		2014		2015		
	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	
JAN	32	32	28	28	58	58	53	53	83	83	JAN
FEB	77	109	96	124	80	138	57	110	104	187	FEB
MAR	178	287	73	197	95	233	77	187	101	288	MAR
APRIL	180	467	240	437	159	392	209	396			APRIL
MAY	618	1085	541	978	605	997	585	981			MAY
JUNE	582	1667	749	1727	606	1603	520	1501			JUNE
JULY	1079	2746	1035	2762	1089	2692	993	2494			JULY
AUG	1131	3877	1178	3940	1188	3880	996	3490			AUG
SEPT	838	4715	831	4771	899	4779	778	4268			SEPT
OCT	154	4869	175	4946	214	4993	120	4388			OCT
NOV	58	4927	86	5032	138	5131	114	4502			NOV
DEC	54	4981	65	5097	64	5195	52	4554			DEC

### RV NIGHTLY GUEST NIGHTS

	2011		2012		2013		2014		2015		
	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	MNTH.	CUM.	
JAN	173	173	176	176	180	180	285	285	304	304	JAN
FEB	214	387	221	397	261	441	150	435	291	595	FEB
MAR	239	626	229	626	359	800	249	684	244	839	MAR
APRIL	341	967	445	1071	209	1009	546	1230			APRIL
MAY	717	1684	638	1709	637	1646	706	1936			MAY
JUNE	713	2397	645	2354	910	2556	1015	2951			JUNE
JULY	1215	3612	1247	3601	1275	3831	1169	4120			JULY
AUG	1257	4869	1300	4901	1293	5124	1228	5348			AUG
SEPT	1062	5931	1076	5977	1079	6203	1120	6468			SEPT
OCT	501	6432	580	6557	694	6897	796	7264			OCT
NOV	258	6690	290	6847	352	7249	432	7696			NOV
DEC	176	6866	246	7093	165	7414	269	7965			DEC

### PERMANENT & SEASONAL TENANT SUMMARY

	AVAIL/GOAL	OCUPIED	%
LTD ACCESS MOORAGE	40 SLIPS	32 36	80%
COMMERCIAL MOORAGE	850 FEET	745 882	88%
SEASONAL MOORAGE	32 SLIPS	27 24	84%
SEASONAL RV'S	10 SITES	10 8	100%
UNDESIRABLE	1 SLIPS	0 0	0%

MAY SLOOP TAVERA RACE - NOT COUNTED

120

STORAGE OPERATIONS REPORT								DATE:	
	2011	2012	2013	2014	2011 YEAR TO DATE	2012 YEAR TO DATE	2013 YEAR TO DATE	2014 YEAR TO DATE	REMARKS
<b>HAUL-OUT</b>									
BOAT YARD - OUT	19	24	15	27	714	742	724	757	
BOAT YARD - IN	18	27	18	24	722	716	693	743	
67% RE-BLOCK	6	6	6	7	82	45	65	70	
40% INSPECTION	3	3	2	3	46	38	38	39	
OTHER	0	2	1	0	35	29	23	37	
<b>SUB TOTAL</b>	<b>46</b>	<b>62</b>	<b>42</b>	<b>61</b>	<b>1599</b>	<b>1570</b>	<b>1543</b>	<b>1646</b>	
SHIP - OUT	8	7	10	5	116	135	161	129	
SHIP - IN	11	6	7	8	110	128	137	134	
SHIP - RE-BLOCK	3	0	0	1	12	12	4	14	
SHIP-INSPECTION	0	2	1	0	5	4	7	4	
SHIP - OTHER	1	1	0	0	4	3	5	0	
<b>SUB TOTAL</b>	<b>23</b>	<b>16</b>	<b>18</b>	<b>14</b>	<b>247</b>	<b>282</b>	<b>314</b>	<b>281</b>	
<b>TOTAL</b>	<b>69</b>	<b>78</b>	<b>60</b>	<b>75</b>	<b>1846</b>	<b>1852</b>	<b>1857</b>	<b>1927</b>	
<b>STORAGE</b>									
PTBH - START	59	71	72	65					
PTBH - END	57	66	69	64					
PTBH-O.P.P.	22	26	24	30					
SHIP-START	19	11	22	18					
SHIP-END	14	13	22	16					
SHIP-O.P.P.	2	2	2	3					
PERM/FREE	0	0	0	0					PERMS
FREE DAYS	16	20	8	15					PAID R/T
					<b>OFF PORT PROPERTY</b>				
PTBH lineal feet	2316	2845	2823	2851	GOLD STAR - 13				
SHIP lineal feet	994	1040	1676	1096	DAY BOAT - 1				
Longterm Storage	23	25	24	21	STEPHENS - 1				
LONGTERM linear	898	950	932	822	PT CO-OP - 6				
					TBM - SHIP - 3				
					TBM - SMALL - 7				
					HAVEN - 2				
<b>JCIA OPERATIONS REPORT</b>									
HANGERS	11	13	13	13					
TIE DN - PAVED	2	2	2	2					
TIE DN - GRASS	0	0	0	0					
TIE DN - NIGHTLY	3	2	0	0					
W/L - HANGERS	0	0	0	0					

## PORT OF PORT TOWNSEND

**MEETING OF:** April 8, 2015

**AGENDA ITEM:** V. Second Reading  
A. Industrial Development Corporation (IDC)  
Application Form

### **BACKGROUND:**

We have been discussing the Port's powers and authority program under the provisions of an IDC. We have two possible candidates for the program. Before entertaining such a process we need to have an application form approved along with an appropriate administration fee.

A form was handed out at the last meeting and is attached. It follows a similar form created by the Port of Bellingham. Other ports charge an administration fee ranging from \$100 to \$2500. Staff could spend considerable time working with an applicant. A fee of \$2500 is more appropriate to cover our cost.

### **Executive Director's Recommendation:**

Approve the attached IDC application form and associated administration fee of \$2500.



**APPLICATION FOR DETERMINATION OF ELIGIBILITY  
INDUSTRIAL REVENUE BOND (IRB)**

Completion of this application and signature by the issuing authority and the bond user authorizes the sponsoring agency to carry determination of eligibility and the Employment Security Department to confirm an SIC number for the herein described project.

**SPONSORING AGENCY:**

Industrial Development Corporation of the Port of Port Townsend

(Name of Issuing Authority)

PO Box 1180, Port Townsend, WA 98368

(Address of Issuing Authority)

Larry Crockett, Executive Director

(Name of Contact Person)

(Contact's Phone #)

\_\_\_\_\_  
(Bond Counsel Name and Firm)

\_\_\_\_\_  
(Address)

(Bond Counsel Phone #)

Has a request for authorization of funds been made to State Dept. of Trade and Community Development?     Yes     No

**APPLICANT FOR IRB:**

\_\_\_\_\_  
(Name of Company/User of Bond Proceeds – Complete Legal Name)

\_\_\_\_\_  
(Company Address)

\_\_\_\_\_  
(Federal ID #)

\_\_\_\_\_  
(Corporate Officers)

Type of Business:

Sole Proprietor \_\_\_\_\_

Year Business Started: \_\_\_\_\_

Partnership \_\_\_\_\_

"S" Corporation \_\_\_\_\_

SIC or NAICS Code if known: \_\_\_\_\_

"C" Corporation \_\_\_\_\_

Banking Reference:

\_\_\_\_\_  
(Name of Bank)

\_\_\_\_\_  
(Location)

\_\_\_\_\_  
(Phone #)

\_\_\_\_\_  
(Bank Officer)

Corporate Legal Counsel:

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(Firm Location)

\_\_\_\_\_  
(Phone #)

\_\_\_\_\_  
(Contact)

**PROJECT INFORMATION:**

\_\_\_\_\_  
(Location of Project)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(County)

**AMOUNT IRB REQUESTED:** \$ \_\_\_\_\_

**COST BREAKDOWN ESTIMATES:**

\$ \_\_\_\_\_ Land\*      \$ \_\_\_\_\_ Buildings

\$ \_\_\_\_\_ Equipment      \$ \_\_\_\_\_ Issuing Costs (est 2% of Total)

\$ \_\_\_\_\_ Other (Please describe) \_\_\_\_\_

\*land and other non-direct manufacturing expenses cannot exceed 25% of the IRB request

Estimated Employment Impact of Project:

\_\_\_\_\_ New permanent direct jobs created      \_\_\_\_\_ New permanent direct jobs retained

\_\_\_\_\_ Transfers (current company employees)      \_\_\_\_\_ Construction related jobs

\_\_\_\_\_ Secondary/spin-off jobs\*

\*Please explain secondary jobs: \_\_\_\_\_

**Please attach a detailed description of the project.**

Date: \_\_\_\_\_ Issuing Authority: \_\_\_\_\_

(Signature, Issuing Authority Official)

\_\_\_\_\_  
(Print Name)

Executive Officer  
Industrial Development Corporation of the  
Port of Port Townsend

Date: \_\_\_\_\_ Bond User: \_\_\_\_\_

(Signature, Company Official)

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(E-Mail)

Please attach additional page(s), if necessary. Information should be detailed and complete.

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**An application fee of \$2,500 is required.**

**Please mail this completed form to:**

Larry Crockett, Executive Director

Port of Port Townsend

PO Box 1180

Port Townsend, WA 98368

**PORT OF PORT TOWNSEND**

**MEETING OF:** April 8, 2015

**AGENDA ITEM:** V. Second Reading  
B. New Day Fisheries Lease

**BACKGROUND:**

This lease proposal was presented to the commission at the March 25, 2015 meeting.

**Executive Director's Recommendation:**

For lease approval, as presented.

**PORT OF PORT TOWNSEND  
BUILDING & LAND LEASE**

**THIS LEASE AGREEMENT** made this \_\_\_\_\_ day of August 2013, 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 NEW DAY FISHERIES, 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 Jefferson County, State of Washington:

**See Exhibit "A" which is attached hereto, and incorporated herein by this reference**

hereinafter referred to as "the premises."

2. **TERM:** The term of this Lease is ten (10) years, beginning September 1, 2013 and ending at midnight, August 31<sup>st</sup>, 2023 unless sooner terminated as provided in this Lease.
3. **RENT:** Lessee agrees to pay as rental for the leased premises the sum of **Two Thousand Three-Hundred and Fifty-Five and 93/100s Dollars (\$2,355.93)** plus all applicable taxes. 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. The rental rate shall be adjusted every three (3) years to the to the prevailing 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 Superior 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 (CPI) for Seattle and Tacoma, 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.

PORT OF PT/NEW DAY FISHERIES  
LEASE AGREEMENT

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 post a security deposit with the Port in the amount of **Four thousand seven hundred eleven dollars and eighty six cent (\$4,711.86)** in order to guarantee performance under this Lease. This Lease shall not be effective until full deposit of the required amount 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. The security deposit may be posted in cash or in a letter of credit or a bond, in a form acceptable to the Port and its legal counsel.
6. **USE OF PREMISES:** Lessee shall use the premises for retail and wholesale sales of fish 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 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 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. **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 – "AS IS" – NO WARRANTIES:**
  - a. Lessee has examined the leased premises and accepts them in their present condition. Landlord makes no representations or warranties with respect to the condition 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.
  - b. Lessee expressly acknowledges that, because the leased buildings were constructed in an incremental fashion over many years that they may require substantial improvements and renovations over the course of the lease term in order to remain tenantable; Lessee further acknowledges

and accepts, that the cost of required repairs may prove to be prohibitively expensive to the Port, necessitating early termination of this Lease Agreement consistent with the terms of Paragraph 12, Subparagraph C of this Lease Agreement.

9. **MAINTENANCE AND REPAIR:** 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 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. Such written approval 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. **DAMAGE, DESTRUCTION OR HAZARDOUS CONDITION:**
  - 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.
- c. Should the Port, upon its own initiative and following consultation with a structural engineer, conclude that the condition of all or a portion of the premises constitutes a hazard to the Tenant and its employees, guests and invitees and that the cost of remedying such hazardous condition is prohibitive, which shall within the Port's sole discretion to determine, the Port shall have the option to terminate this Lease on one-hundred and twenty (120) days' notice. In the event that this paragraph shall become applicable, the Port shall immediately advise Lessee upon receipt of written findings from a structural engineer regarding the existence of a hazardous condition and the Port's decision to terminate this Lease. For the period from the time of the engineer's finding of the existence of a hazardous condition to the date of termination of the Lease, the monthly minimum rental shall be abated in the same proportion as the untenable portion of the premises bears to the whole thereof. Lessee shall not be entitled to any damages or compensation for business interruption or loss of revenue for early termination of the Lease under this provision.

13. **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.

- 14. 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. Comprehensive Business Automobile 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, property damage liability, hired car liability, and non-owned auto liability.
  - c. 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 14 shall be met prior to occupancy.

- 15. 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 15 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.
- 16. 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.

17. **HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT:** Lessee has examined the Hazardous Substance Warranty and Agreement, consisting of six (6) pages, which is attached 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.
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 the City of Port Townsend. 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 **sixty (60)** or more days before the termination date specified in the notice. Compensation to Lessee for loss of use, cost of relocation, and/or cost of improvement, will be agreed by Lessee and the Port Executive Director.
- 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 - ATTORNEYS' FEES:** At the expiration or sooner termination of this Lease, Lessee shall promptly vacate the premises or re-negotiate a lease for the premises with the Port. In the event that the Port shall be required to bring any action to enforce any of the provisions of this Lease, or shall be required to defend any action brought by Lessee with respect to this Lease, and if the Port shall be successful in such action, Lessee shall, in addition to all other payments required herein, pay all of the Port's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.
- 30. HOLDING OVER:** If Lessee shall, with the consent of the Port, hold over after the expiration or sooner termination of the term of this Lease, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to the Port the same rate of rental as set forth herein, unless a different rate shall be agreed upon, and shall be bound by all of the additional provisions of this Lease Agreement in so far as they may be pertinent.
- 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 which 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:  
NEW DAY FISHERIES, INC.  
c/o Scott Kimmel  
2427 Washington Street  
Port Townsend, WA 98368  
Phone: (360) 385-4600

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 Lessees 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.

Lease Agreement dated this \_\_\_\_\_ day of July 2013 is hereby approved by the Port of Port Townsend, on this \_\_\_\_\_ day of July 2013 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

**LESSEE**

\_\_\_\_\_  
Scott Kimmel for  
NEW DAY FISHERIES, INC.

**ATTEST:**

**PORT OF PORT TOWNSEND**

**APPROVED AS TO FORM**

\_\_\_\_\_  
Larry Crockett, Executive Director

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

PORT OF PT/NEW DAY FISHERIES  
LEASE AGREEMENT



**STATE OF WASHINGTON  
COUNTY OF JEFFERSON**

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
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 Larry Crockett 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: \_\_\_\_\_

## PORT OF PORT TOWNSEND

### License Agreement

This License Agreement (the "Agreement") is entered into as of the \_\_\_\_ day of September, 2014, by and between the PORT OF PORT TOWNSEND, a Washington Municipal Corporation (the "Port" or the "Licensor"), and NEW DAY FISHERIES, INC., a Washington Corporation (the "Licensee").

#### Recitals

- A. Licensee is in the business of retail and wholesale processing and sales of seafood products. In connection therewith, the Licensee wishes to use Port land and improvements (i.e., the pier) located on property owned by the Port shown on the attached Exhibit "A" in its "as is" condition, for loading/unloading and storage of seafood products in a refrigerated container owned by Licensee.
- B. Licensee desires to obtain a license from the Port, and the Port desires to grant such license, for loading/unloading and storage of seafood products in a refrigerated container located on Port property, on the terms and conditions set forth herein.

#### Agreement

NOW, THEREFORE, the parties agree as follows:

- Grant of License.** The Port hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive right and privilege, for the term set forth herein, to load/unload and store seafood products on the premises described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Premises").
- Term.** The term of this Agreement shall commence on October 1, 2014, and end on September 30, 2015. During such period, Licensee's use of the Premises shall be limited to the purposes set forth herein. Notwithstanding the foregoing, either party may terminate this Agreement as provided in Section 8, below. This Agreement may be renewed annually.
- License Fee.** License Fee shall be \$100 per year
- Costs and Expenses.** Licensee shall be responsible for payment of all costs and expenses incurred in connection with its operations under this Agreement. Licensee shall obtain all permits required for its operations, shall supply all fixtures and equipment necessary or desirable for its activities, and shall hire and be responsible for any employees.
- No Authority.** The parties acknowledge and agree that this Agreement does not create a partnership or joint venture between the parties, nor is this Agreement to be deemed to create

any agency relationship or appoint Licensee as the Port's agent except as may be expressly provided herein. Licensee shall not have any right to bind the Port except as the Port may specifically agree in writing. All activities of the Licensee hereunder shall be conducted solely in the Licensee's name.

**6. Insurance.**

**6.1** Licensee shall, at Licensee's sole expense, furnish and keep in force at all times during the term of this Agreement at least the following minimum insurance coverage with deductible amounts and other terms satisfactory to the Port: Comprehensive General Liability Insurance covering personal injury and property damage to a combined single limit in an amount not less than One Million Dollars (\$1,000,000).

**6.2** Licensee shall provide certificates evidencing such insurance acceptable to the Port before commencing activities under this Agreement.

**6.3** Such insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Licensee.

**7. Indemnity.** Licensee shall indemnify the Port against, and save and hold the Port harmless from, any and all liability, claims, demands, damages and costs of every kind and nature including injury to or death of any and all persons, including without limitation employees or agents of the Port or of Licensee or Licensee's subcontractors, and for damage, destruction, or loss to, or of any and all property, real or personal, including without limitation, property of the indemnified party or of any other person or persons, resulting from or in any manner arising out of or in connection with the Licensee's use of the Premises for seafood loading/unloading and cold storage. Licensee shall also, upon request by the Port, and at no expense to the Port, and with attorneys acceptable to the Port, defend the Port in any and all suits concerning such liability, claims, demands, damages and costs, injury to or death of any and all persons, and concerning such damage, destruction or loss, to or of any and all property, real or personal, including without limitation, suits by employees or representatives of Licensee.

**8. Termination.**

**8.1 Termination for Cause.**

**a. By Either Party.** Either party may terminate this Agreement upon written notice if the other party breaches any material term, condition, or covenant of this Agreement and such party fails to cure any such breach within ten (10) calendar days of notice of occurrence of such breach or if the breach cannot of its nature be cured within such ten (10) calendar day period, to commence proceeding in good faith to remedy such breach within such ten (10) calendar day period and to thereafter diligently prosecute such proceedings in good faith until the breach is remedied (such termination to be in addition to any other remedies the party may have).

**b. By the Port.** In the unlikely event that a regulatory agency or a licensed structural engineer concludes that the Premises are unsafe for the licensed and intended use, this Agreement may be terminated immediately by the Port, with concurrent notice of such termination provided to the Licensee.

**8.2 Termination for Convenience.** Either party may terminate this Agreement at any time for its convenience upon ten (30) calendar days' prior written notice to the other.

**9. Access to Premises.** This Agreement does not convey to Licensee any right, title or interest in or to the Premises, except that Licensee shall have, and is hereby granted, a non-exclusive license to enter upon and occupy the Premises for the purposes of the activities permitted hereunder. Licensee has examined the Premises and accepts the Premises "AS IS" and in its present condition. The Port does not make, and hereby expressly disclaims, any and all warranties expressed or implied regarding the Premises or any condition thereon, past, present or future, known or unknown.

**10. Compliance with Regulations/All Laws.** Licensee agrees to comply with all applicable Rules, Regulations and Procedures of the Port now in existence or hereafter promulgated for the general health, welfare, safety and convenience of the Port, its' various tenants, invitees, licensees and the general public. Licensee further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations, including, without limitation, those relating to environmental matters, and to indemnify the Port for any liability, damages, costs or fees incurred by the Port for any liability, damages, costs or fees incurred by the Port due to the Licensee's failure to comply with the requirements of this section. Costs and fees shall include all direct and indirect costs and professional fees, including engineering and attorney's fees. Any fees for any federal, state or local inspections and/or certificates requires for Licensee's activities shall be paid by the Licensee.

**11. Notices.** All notices required under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by registered or certified mail, postage prepaid to:

To the Port:  
THE PORT OF PORT TOWNSEND  
P.O. Box 1180  
Port Townsend, Washington 98368  
Phone: (360) 385-0656

To the Licensee:  
NEW DAY FISHERIES, INC.  
c/o Scott Kimmel  
2427 Washington Street  
Port Townsend, WA 98368  
Phone: (360) 385-4600

Such notice or other communication shall for all purposes be treated as being effective or having been given when actually received or if sent by mail, upon the earlier of actual receipt or two (2)

PORT OF PT/NEW DAY FISHERIES  
LICENSE AGREEMENT

business days (Saturdays, Sundays and U.S. Postal Service holidays excluded) after the same has been deposited in a regularly maintained and serviced receptacle for the deposit of the U.S. mail, addressed and postage prepaid. Either party may change its address for receipt of notices by notice given in the manner provided herein.

**12. Governing Law.** This Agreement shall be interpreted in accordance with, and governed by, the substantive and procedural law of the State of Washington. The parties hereby consent to the jurisdiction of the courts of the State of Washington in Jefferson County in resolving any dispute arising under or concerning this Agreement.

**13. Attorney's Fees.** If any litigation or arbitration is commenced between the parties concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the party prevailing in such litigation or arbitration will be entitled, in addition to such other relief as may be granted, to reasonable attorney's fees and expenses incurred in connection with such litigation or arbitration.

**14. Subcontracts and Assignment.** Neither party may assign this Agreement or delegate, assign, or subcontract all, or any part of its duties under this Agreement without the express written consent of the other party.

**15. Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof; supercedes all prior agreements and understandings, whether oral or written, which the parties may have in connection herewith; and may not be modified except by written agreement signed by the parties.

**16. Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable in whole or in part, such determination shall not affect or impair the enforceability or validity of the remainder of this Agreement.

**17. Waiver.** Failure of either party at any time or from time to time to enforce any of the terms of this Agreement shall not be construed to be a waiver of such term or of such party's right to thereafter enforce each and every provision hereof. No waiver of any term of this Agreement shall be effective unless made in a writing signed by the party against whom any such waiver is sought to be enforced.

**18. Authorization.** The execution of this Agreement and the performance hereunder of each signatory have been duly and validly authorized.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

**LICENSEE**

PORT OF PT/NEW DAY FISHERIES  
LICENSE AGREEMENT

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Scott Kimmel for  
NEW DAY FISHERIES, INC.

**ATTEST:**

**PORT OF PORT TOWNSEND**

**APPROVED AS TO FORM**

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Larry Crockett, Executive Director

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Port Attorney

## PORT OF PORT TOWNSEND

**MEETING OF:** April 8, 2015

**AGENDA ITEM:** V. Second Reading  
C. EV (Electric Vehicle) Tourism

### **BACKGROUND:**

Last meeting staff discussed the opportunity to install charging stations for electric vehicles on Port property. It was discussed that there are various grants and car manufacturer donations that could fund installation of these charging stations to encourage tourists to visit with their electric vehicles. The goal is that no port funds would be used for this project; however, staff estimates about 120 hours of time would be needed to secure this funding.

Staff would like to know if the commission sees value in this project and if we should proceed seeking funding.

### **Executive Director's Recommendation:**

For discussion and direction.



**PORT OF PORT TOWNSEND**

**MEETING OF:** April 8, 2015

**AGENDA ITEM:** V. Second Reading  
D. Engineer Applicants

**BACKGROUND:**

Staff conducted interviews with applicants for the engineering position and will update the commission.

**Executive Director's Recommendation:**

For discussion.

## PORT OF PORT TOWNSEND

**MEETING OF:** April 8, 2015

**AGENDA ITEM:** VI. First Reading  
A. Non-compliance Fee

### **BACKGROUND:**

We recently experienced another spill incident in the yard. It is time for us to discuss/review our policy for dealing with a failure to follow our Best Management Practices (BMP). Our policy needs to have actions that will get the attention of those using our facility, and have the result of protecting the environment. This review should also consider the application of a "non-compliance fee". As to the amount of such a fee and possible scale for first offense versus second offense, this can be discussed. Ultimately, banishment from our facility would be the final step for someone who cannot follow the rules/BMPs.

### **Executive Director's Recommendation:**

For discussion and direction as appropriate.

## PORT OF PORT TOWNSEND

**MEETING OF:** April 8, 2015

**AGENDA ITEM:** VI. First Reading  
B. Restroom Open Hours

### **BACKGROUND:**

Timed door control of the restrooms at Boat Haven and Point Hudson continues to be discussed at length. It has been brought up that the timed locks on the restrooms at Boat Haven should be opened earlier. Presently the locks automatically lock at 8 PM and open at 7AM. A few years back the restrooms did open at 5:30AM at the request of then Commissioner Thompson, but for some reason were changed back to open at 7AM.

Staff would like clarification as to what hours the Commission would like the restrooms opened and closed at. Certainly tenants can have control 24 hours a day with their codes but what we are talking about is when the public can have access without a code.

Keep in mind that we provide a port-a-potty at all times behind the restrooms.

### **Executive Director's Recommendation:**

For discussion and direction