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**Port of Port Townsend
2nd Monthly Regular Meeting Agenda
Wednesday, April 27, 2016, 5:30 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 Special Public Workshop Minutes – April 11, 2016.....1-2
 - Approval of Special Meeting Minutes – April 11, 2016.....3-4
 - Approval of Special Meeting Minutes – April 21, 2016.....5
 - B. Resolution No. 645-16 – Modifying the Amount of the Auditor’s Revolving Fund...6-7
 - C. Approval of Warrants
- IV. Public Comments (not related to Agenda)
- V. Second Reading (action items)
- VI. First Reading (discussion only)
 - A. Fine Yacht Interiors Lease.....8-22
 - B. Port Townsend Brewing Company Lease.....23-37
- VII. Potential Immediate Action Items (unanimous Commission approval required)
 - A. Organizational Chart.....38-39
- VIII. Other Business
 - A. Boat Yard Permit Update.....40
 - B. Point Hudson Breakwater.....41-43
- IX. Staff Comments
- X. Public Comments
- XI. Commissioner Comments
- XII. **Next Special Public Workshop/Special Meeting: Date: Monday, May 9, 2016 – workshop at 9:30 AM, meeting at 1:00 PM, Port Commission Building, 333 Benedict Street, Port Townsend, WA.**
- XIII. Executive Session
 - A. Litigation, pursuant to RCW 42.30.110 (i)
 - B. Real Estate, pursuant to RCW 42.30.110 (c)

C. Evaluate Qualifications of Applicants for Public Employment, pursuant to
RCW 42.30.110 (g)

XIV. Adjournment

PORT COMMISSION SPECIAL PUBLIC WORKSHOP – April 11, 2016

The Port of Port Townsend Commission met for the Public Workshop session in the Commission Building, 333 Benedict Street, Port Townsend, WA.

Present: Commissioners Tucker, Clinefelter and Hanke (Hanke arrived 8:55 AM)
Executive Director – Crockett
Deputy Director – Pivarnik
Auditor – Berg
Planning Analyst - Toews
Attorney – O'Malley
Minutes - Berg

I. CALL TO ORDER:

The Special Workshop was called to order at 8:30 AM.

II. AGENDA:

Refer to attached workshop agenda for items discussed.

Public comments were provided by: Gordon Neilson, Carol Tabler, Bertram Levy and CJ Burleson.

III. EXECUTIVE SESSION WORKSHOP:

The public workshop recessed into an Executive Session Workshop at 9:38 AM, with no action to be taken, pursuant to RCW 42.30.110 (g) – to evaluate the qualifications of applicants for public employment.

IV. RECONVENING AND ADJOURNMENT OF PUBLIC WORKSHOP:

The Workshop reconvened and adjourned at 11:24 AM.

ATTEST:

Peter W. Hanke, President

Brad A. Clinefelter, Secretary

Stephen R. Tucker, Vice President

**Port of Port Townsend
Special Public Workshop
Monday, April 11, 2016, 8:30 a.m.
Commission Building
333 Benedict Street
Port Townsend, WA**

AGENDA

➤ **Stormwater Update:**

Staff will brief the commission on the new draft Boatyard Permit. Staff will also provide the commission with an update on the status of RFPs (Request for Proposals) for the stormwater feasibility study. Discussion of possible changes to the BMPs (Best Management Practices).

➤ **Executive Session Workshop:**

The Commission will adjourn to executive session per RCW 42.30.110 (g) to discuss qualifications of applicants for public employment.

Note: This is a Public Port Commission Workshop. Workshops are for information sharing only and no decisions will be made during the session. Public input may be taken at the Commissions' discretion.

PORT COMMISSION SPECIAL MEETING– APRIL 11, 2016

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 – Berg
Planning Analyst – Toews
Attorney – O’Malley
Minutes – Berg/Nelson

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

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

Commissioner Hanke announced this is Mr. Pivarnik’s last commission meeting and thanked him for his years of service. This being Mr. Pivarnik’s 540th commission meeting.

II. APPROVAL OF AGENDA:

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

III. CONSENT AGENDA (1:06):

- A. Approval of Special Workshop Minutes – March 23, 2016
Approval of Regular Meeting Minutes – March 23, 2016
- B. Operations Reports – March 2016
- C. Approval of Warrants
Warrant #055970 through #055984 in the amount of \$63,585.96 for Payroll & Benefits
Electronic Payment in the amount of \$87,919.28 for Payroll & Benefits
Warrant #055985 through #056045 in the amount of \$113,670.23 for Accounts Payable
Electronic Debit in the amount of \$14,436.22 for WA State Dept. of Labor & Industries
1st Quarter Tax Return for January – March 2016

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

IV. PUBLIC COMMENTS (Not related to agenda):

Bertram Levy commented on water used by trailer boaters and suggested installing a coin-op system at the washdown.
Melinda Bryden commented against charges for wash down use.
George Yount announced a June 3, 2016 (10:00 – 2:00) sea level rise forum at Point Hudson.

V. SECOND READING (Action Items):

VI. FIRST READING (Discussion Only):

A. Commission Code of Conduct:
Mr. Crockett proposed ideas for a Commission Code of Conduct.

VII. POTENTIAL IMMEDIATE ACTION ITEMS):

VIII. OTHER BUSINESS:

A. Mapletree LLC:
Mr. Crockett discussed a proposal from Mapletree LLC on privately owned property near the maintenance shop.

VIII. STAFF COMMENTS:

Attorney O’Malley thanked Mr. Pivarnik for his years of service.
Ms. Berg also thanked Mr. Pivarnik. She also discussed the Seattle Boat Show and asked if there was a way to glean how advantageous this event is to the Port.

IX. PUBLIC COMMENTS:

Bill Putney thanked Mr. Pivarnik on behalf of the Jefferson County Pilots Association.
Karen Gale discussed Boat Yard Permit issues with an offer to provide labor to plant plants to deal with permit issues and to enforce BMPs.

George Yount thanked Mr. Pivarnik and added we are losing a large chunk of institutional knowledge and is concerned old problems will be repeated.

Pam LaNau commented on qualities to look for in an executive director.

Melinda Bryden thanked Mr. Pivarnik and commented on his sense of humor. She also provided comments on the Strategic Plan, and to refocus on the entire county, not just Port Townsend.

Karen Gale commented on living in the County and commuting to work in Port Townsend.

X. COMMISSIONER COMMENTS:

Commissioner Clinefelter asked how we are going to pay for the breakwater and to look at options we have and don't have to pay the \$5.5M. (The breakwater permitting is 90% complete. Testing is needed for dioxins in the soil and the possibility that we would be required to dredge.

Commissioner Tucker thanked Mr. Pivarnik and for all the projects he has worked on.

Commissioner Hanke again thanked Mr. Pivarnik.

XI. NEXT MEETING: Next regular meeting will be held Wednesday, April 27, 2016 at 5:30 PM in the Port Commission Building, 333 Benedict St, Port Townsend.

XII. EXECUTIVE SESSION:

A. Litigation:

The regular session recessed into Executive Session at 1:52 PM to discuss litigation, pursuant to RCW 42.30.110 (i), duration of fifteen minutes with no action. At 2:09 PM the session was extended another ten minutes.

(Item B – Evaluating Qualifications of Applicants for Public Employment was deleted.)

XIII. RECONVENING AND ADJOURNMENT OF REGULAR MEETING:

The meeting reconvened and adjourned at 2:19 PM there being no further business to come before the Commission.

ATTEST:

Peter W. Hanke, President

Brad A. Clinefelter, Secretary

Stephen R. Tucker, Vice President

PORT COMMISSION SPECIAL MEETING– Thursday, April 21, 2016

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

Present: Commissioners – Hanke, Tucker & Clinefelter
Executive Director – Crockett
Auditor - Berg
Minutes – Berg/Nelson
Attorney – O'Malley

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Hanke called the special meeting to order at 9:30 AM.

II. RECESS TO EXECUTIVE SESSION:

The regular session recessed into Executive Session at 9:32 AM to discuss Personnel – Qualifications of an Applicant for Public Employment, pursuant to RCW 42.30.110 (g), duration one hour, with no action.

At 10:32 AM, the session was extended to 11:00 AM.

At 11:00 AM, the session was extended to 11:05 AM.

At 11:05 AM, the session was extended to 11:20 AM.

III. RECONVENING OF REGULAR SESSION:

The regular meeting reconvened at 11:20 AM.

IV. NEXT REGULAR MEETING: Wednesday, April 27, 2016 at 5:30 PM, in the Port Commission Building, 333 Benedict Street, Port Townsend, WA.

V. ADJOURNMENT:

The Special Meeting adjourned at 11:20 AM with no further business to come before the commission.

ATTEST:

Brad A. Clinefelter, Secretary

Peter W. Hanke, President

Stephen R. Tucker, Vice President

RESOLUTION NO. 645-16

A Resolution of the Commission of the Port of Port Townsend

RESOLUTION AMENDING RESOLUTION No. 618-14, TO MODIFY THE AMOUNT OF THE AUDITOR'S REVOLVING FUND.

WHEREAS: The Port of Port Townsend has established previously, by Resolution No. 92 an Auditor's Revolving Fund, to pay vouchers for small expenditures that cannot feasibly be postponed until the next regular meeting of the Port of Port Townsend; and

WHEREAS: the fund was also used to establish the daily working cash needed for the cash register change funds throughout the Port; and

WHEREAS: the original Resolution No. 92 was amended on April 23, 2014 by Resolution No. 613-14, to increase the authorized amount, to fund payroll direct deposit ACH, and Resolution No. 613-14 was later amended by Resolution No. 618-14 to increase the authorized amount of the Auditor's Revolving Fund from \$38,800.00 to \$48,800.00; and,

NOW, THEREFORE BE IT HEREBY RESOLVED by the Port Commission of the Port of Port Townsend that Resolution No. 618-14 shall be amended to increase the amount used for the cash register change funds from \$48,800.00 to \$49,250.00, as detailed in the listing marked Exhibit A and attached to this resolution.

ADOPTED this 27th day of April, 2016 by the Commission of the Port of Port Townsend and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission duly affixed.

ATTEST:

Brad Clinefelter, Secretary

Pete Hanke, President

Steve Tucker, Vice President

APPROVED AS TO FORM:

Carolyn A. Lake, Goodstein Law Group, PLLC
Port Attorney

DETAIL OF AUDITOR'S REVOLVING FUND

Auditor's Revolving Fund Checking Account	\$47,275.00
Boat Haven Cash Drawer #1*	275.00
Boat Haven Cash Drawer #2	225.00
Boat Haven Cash Drawer #3	225.00
Work Yard Cash Drawer	275.00
Point Hudson Cash Drawer #1*	275.00
Point Hudson Cash Drawer #2	225.00
Point Hudson Cash Drawer #3	225.00
Quilcene Cash Drawer	225.00
Administrative Office Postage Fund	<u>25.00</u>
Balance in Fund	\$49,250.00

**Note: Drawers #1 include \$50.00 in quarters required for change for customers.*

PORT OF PORT TOWNSEND

MEETING OF: April 27, 2016

AGENDA ITEM: VI. First Reading
A. Fine Yacht Interiors Lease

BACKGROUND:

Gwendolyn Tracy, proprietor of Fine Yacht Interiors, has been working with Port staff to outline the terms and conditions of a new lease for her business located at the Port Townsend Boat Haven. In staff's judgment, the proposed terms and conditions enable Fine Yacht Interiors to continue to fulfill its important marine trades niche at the Boat Haven, and aides the Port in supporting the local economy while supporting the long-term fiduciary interests owed to the taxpayers of Jefferson County.

The proposed 3-year Lease (which includes options for three (3) additional three (3) year extensions) encompasses the following areas:

- Approximately 2,200 square feet in the Port's building located 910 Haines Place (i.e., a building shared with the Blue Moose Café); and
- Approximately 80 square feet of storage locker space, situated on the east end of the building.

The proposed base rental for the above-described premises is \$1,161.13 per month.

In nearly all other respects, the terms and conditions of the Port's standard lease agreement apply. However, because of the nature of the activities and operations of Fine Yacht Interiors, the Port's standard Hazardous Substances Warranty and Agreement has not been incorporated.

Executive Director's Recommendation:

Authorize Executive Director to approve the new three (3) year lease with Fine Yacht Interiors/Gwendolyn Tracy.

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

THIS LEASE AGREEMENT made this 1st day of May 2016, 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 Fine Yacht Interiors, Inc., a Washington sole proprietorship, 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, certain real property (hereinafter "the premises") located in Jefferson County, Washington,
 - a. Approximately 2,200 square feet of building space in the Port's building located at 910 Haines Place, Port Townsend, WA 98368; and
 - b. Two (2) storage lockers (lockers #19 and #20) together comprising approximately 80 square feet (i.e., 40 square feet each) situated on the east end of the Port's building located at 910 Haines Place, Port Townsend, WA 98368.

hereinafter referred to collectively as "the premises."

2. **TERM:** The term of this Lease is three (3) years, beginning May 1, 2016 and ending at midnight, April 30th, 2019, unless sooner terminated as provided in this Lease. The Lessee shall also have an option to extend the lease term by three (3) additional three (3) 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 pay as rental for the leased premises the sum of **One Thousand One Hundred and Sixty-One Dollars and Thirteen Cents (\$1,161.13)** 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 may be adjusted every three (3) years 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 Court. The rental rate beginning in year two and annually throughout the term of the lease will

be adjusted by an amount equal to the accumulative amount found on the Consumer Price Index for all urban consumers (CPI-U) for Seattle-Tacoma-Bremerton, which is compiled by the Department of Labor, Bureau of Statistics. In no event shall any rent adjustment result in either an increase exceeding 4%, or a reduction in rent from the rate paid in the prior year.

4. **LATE CHARGE:** In the event that any installment of rent remains unpaid more than twenty (20) days after it is due, then Lessee shall also be obliged to pay a "late charge" as per the Port of Port Townsend Rate Schedule then in effect.
5. **SECURITY DEPOSIT:** Upon the execution of this Lease, Lessee shall deposit with the Port two (2) month's rent plus applicable taxes in the amount of Two Thousand Six Hundred Twenty Dollars and Forty-Four Cents (\$2,620.44) in order to guarantee performance under this Lease. The deposit shall be held by the Port as security for Lessee's faithful performance of all of their obligations under this Lease. However, because the Lessee has an existing deposit of \$1,240.67 with the Port under an agreement now superseded by this Lease, this Paragraph 5 shall be satisfied by Lessee's deposit of an additional **One Thousand Three Hundred Seventy-Nine Dollars and Seventy-Seven Cents (\$1,379.77)** with the Port. 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.
6. **USE OF PREMISES:** Lessee shall use the premises as a canvas shop (for the design and manufacture of yacht interiors) and boat repair, construction and other marine related uses, 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:** The Port will bill the Lessee \$92.20 per month for the first year of this agreement for water, stormwater, sewer and garbage. This amount will be reviewed on an annual basis for adjustments based on actual charges. Lessee shall be liable for all utility services furnished to the premises, including, but not limited to, light, heat, electricity, gas, and janitorial services.

PORT OF PT/FINE YACHT INTERIORS
LEASE AGREEMENT

8. **ACCEPTANCE OF PREMISES – “AS IS” – NO WARRANTIES:** Lessee has examined the leased premises and accepts them in their present condition. The Port 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.
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 it's own expense, and at all times:
- a. Keep the premises, and the adjoining roadways and walkways, 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 Lessee 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. **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.
18. **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.
19. **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(s), 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's 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.

20. **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.
21. **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. Lessee and the Port Executive Director will agree compensation to Lessee for loss of use, cost of relocation, and/or cost of improvement.
22. **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.

23. **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.
24. **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.
25. **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.
26. **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 20 hereof.
27. **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.

28. **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.
29. **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.
30. **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.
31. **LIENS AND ENCUMBRANCES:** Lessee shall keep the leased premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the said premises by Lessee. At the Port's request, Lessee shall furnish the Port with written proof of payment of any item that would or might constitute the basis for such a lien on the leased premises if not paid.
32. **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:
Gwendolyn Tracy
Fine Yacht Interiors
P.O. Box 1191
Port Townsend, WA 98368

PORT OF PT/FINE YACHT INTERIORS
LEASE AGREEMENT

or to such other respective addresses as the parties 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.

33. **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.
34. **"LESSEES" INCLUDES LESSEE, ETC.:** It is understood and agreed that for convenience the word "Lessees" and verbs and pronouns in the plural 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 Lessees or Lessee under this Lease Agreement.
35. **CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
36. **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.
37. **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.

38. **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.

39. 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 their 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 1st day of May 2016 is hereby approved by the Port of Port Townsend, on this 27th day of April 2016 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

LESSEE

Gwendolyn Tracy, Proprietor
Fine Yacht Interiors

PORT OF PT/FINE YACHT INTERIORS
LEASE AGREEMENT

ATTEST:

PORT OF PORT TOWNSEND

APPROVED AS TO FORM

Larry Crockett, Executive Director

Port Attorney

PORT OF PT/FINE YACHT INTERIORS
LEASE AGREEMENT

STATE OF WASHINGTON

COUNTY OF JEFFERSON

I certify that I know or have satisfactory evidence that GWENDOLYN TRACY 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

MEETING OF: April 27, 2016

AGENDA ITEM: VI. First Reading
B. Port Townsend Brewing Company Lease

BACKGROUND:

The Port Townsend Brewing Company (Guy and Kim Sands) has been working with Port staff to outline the terms and conditions of a new lease for their business located at the Port Townsend Boat Haven. In staff's judgment, the proposed terms and conditions meet the needs of Port Townsend Brewing Company, help to fulfill the Port's mission to support a vital and healthy local economy, and satisfy the long-term fiduciary interests owed to the taxpayers of Jefferson County.

The proposed 5-year Lease (which includes options for three (3) additional five (5) year extensions) encompasses the following areas:

- The 3,000 square foot "main" brewery building located at 330 10th Street;
- Approximately 1,000 square feet in the Port's building located at 325 10th Street;
- Roughly 2,360 square feet of "beer garden" space located west of the main building; and
- Approximately 225 square feet of fenced yard area, located west of the above-described beer garden, used for storage space.

The proposed base rental for the above-described premises (which includes a combination of unimproved outdoor storage areas, warehouse/storage areas, and main building (i.e., brewery and tasting room) is \$2,887.54 per month.

In most other respects, the terms and conditions of the Port's standard lease agreement apply. However, because of the nature of the Brewery's activities and operations, the Port's standard Hazardous Substances Warranty and Agreement has not been incorporated.

Executive Director's Recommendation:

Authorize Executive Director to approve the new five (5) year lease with the Port Townsend Brewing Company, Inc.

PORT OF PORT TOWNSEND LAND & BUILDING LEASE

THIS LEASE AGREEMENT made this 1st day of May 2016, 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 the Port Townsend Brewing Company, Inc. a Washington for profit 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, certain real property (hereinafter "the premises") located in Jefferson County, Washington, depicted upon Exhibit "A" which is attached hereto and incorporated herein by this reference, and which is more particularly described as follows:
 - a. Approximately 2,360 square feet of fenced yard area used as an outdoor "beer garden" situated immediately adjacent and to the west of 330 10th Street, Port Townsend, WA 98368;
 - b. Approximately 225 square feet of fenced yard area, formerly a portion of the Port Townsend Lumber Yard, situated immediately adjacent and to the west of both the above described "beer garden" and 330 10th Street, Port Townsend, WA 98368;
 - c. Approximately 1,000 square feet of floor space in Lessor's building located at 325 A & B 10th Street, Port Townsend, WA 98368; and
 - d. Approximately 3,000 square feet of floor space in Lessor's building located at 330 10th Street, Port Townsend, WA 98368, hereinafter referred to collectively as "the premises."

2. **TERM:** The term of this Lease is five (5) years, beginning May 1, 2016 and ending at midnight, April 30th, 2021, unless sooner terminated as provided in this Lease. The Lessee shall also have an option to extend the lease term by three (3) additional five (5) 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.

2. **RENT:** Lessee agrees to pay as rental for the leased premises the sum of **Two Thousand Eight Hundred and Eighty-Seven Dollars and Fifty-Four Cents (\$2,887.54)** 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 may be adjusted every three (3) years 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 Court. The rental rate beginning in year two and annually throughout the term of the lease will be adjusted by an amount equal to the accumulative amount found on the Consumer Price Index for all urban consumers (CPI-U) for Seattle-Tacoma-Bremerton, which is compiled by the Department of Labor, Bureau of Statistics. In no event shall any rent adjustment result in a reduction in rent from the rate paid in the prior year.

4. **LATE CHARGE:** In the event that any installment of rent remains unpaid more than twenty (20) days after it is due, then Lessee shall also be obliged to pay a "late charge" as per the Port of Port Townsend Rate Schedule then in effect.
5. **SECURITY DEPOSIT:** Upon the execution of this Lease, Lessee shall deposit with the Port two (2) month's rent plus applicable taxes in the amount of **Six Thousand Five Hundred Sixteen Dollars and Sixty Cents (\$6,516.60)** in order to guarantee performance under this Lease. The deposit shall be held by the Port as security for Lessee's faithful performance of all of their 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 as a brewery, for the manufacture, storage, wholesaling, distribution and retailing of beer, 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:** Lessee has examined the leased premises and accepts them in their present condition. The

Port 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.

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 it's own expense, and at all times:
 - a. Keep the premises, and the adjoining roadways and walkways, 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 Lessee 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. 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.
- 18. 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.
- 19. 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(s), 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's 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.

20. **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.
21. **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. Lessee and the Port Executive Director will agree compensation to Lessee for loss of use, cost of relocation, and/or cost of improvement.
22. **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.

23. **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.
24. **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.
25. **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.
26. **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 20 hereof.
27. **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.

- 28. 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.
- 29. 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.
- 30. 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.
- 31. LIENS AND ENCUMBRANCES:** Lessee shall keep the leased premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the said premises by Lessee. At the Port's request, Lessee shall furnish the Port with written proof of payment of any item that would or might constitute the basis for such a lien on the leased premises if not paid.
- 32. 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:
Guy Sands
Port Townsend Brewing Company
330 C 10th Street
Port Townsend, WA 98368

or to such other respective addresses as the parties 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.

- 33. 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.
- 34. "LESSEES" INCLUDES LESSEE, ETC.:** It is understood and agreed that for convenience the word "Lessees" and verbs and pronouns in the plural 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 Lessees or Lessee under this Lease Agreement.
- 35. CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
- 36. 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.
- 37. 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.

- 38. 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.

39. 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 their 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 1st day of May 2016 is hereby approved by the Port of Port Townsend, on this 27th day of April 2016 and effective upon the receipt of a deposit and liability insurance documentation from the Lessee.

LESSEE

Guy Sands
Port Townsend Brewing Company, Inc.

PORT OF PT/PT BREWING
LEASE AGREEMENT

ATTEST:

PORT OF PORT TOWNSEND

APPROVED AS TO FORM

Larry Crockett, Executive Director

Port Attorney

PORT OF PT/PT BREWING
LEASE AGREEMENT

STATE OF WASHINGTON

COUNTY OF JEFFERSON

I certify that I know or have satisfactory evidence that GUY SANDS 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

MEETING OF: April 27, 2016

AGENDA ITEM: VII. Potential Immediate Action
A. Organizational Chart

BACKGROUND:

With the departure of the Deputy Director and pending retirement of the Executive Director (ED) the attached proposed change to the Port's Organizational Chart is recommended. It essentially will bring Eric Toews on full-time and expand his duties and bring the three operational divisions directly under the ED.

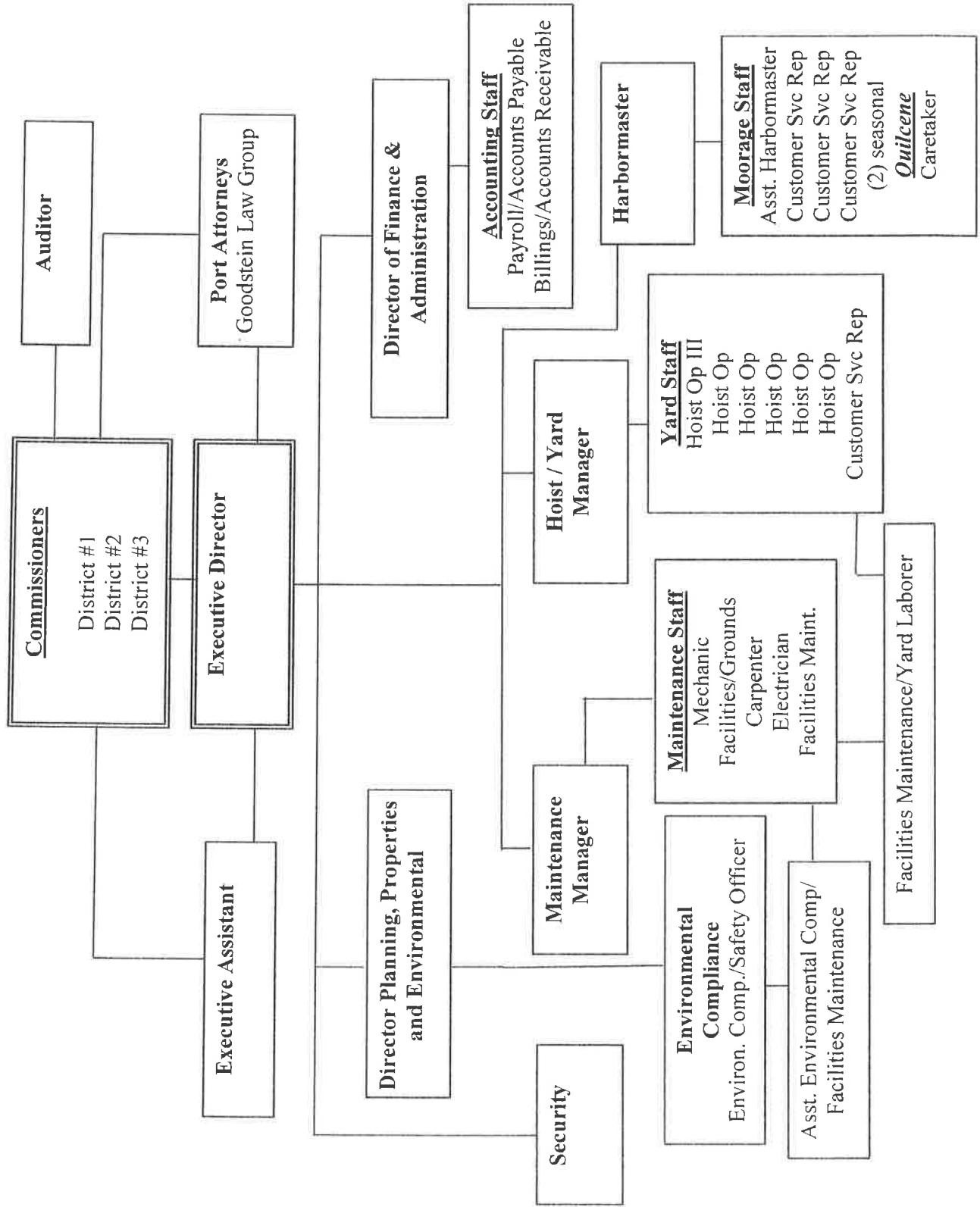
This will allow current functions of the Port to continue while the Commission selects a new ED and allows time for the new ED to get up to speed. The new ED may recommend further changes in the future.

The change would be effective May 1, 2016. Once approved, the ED will finalize the job description and salary.

Executive Director's Recommendation:

For immediate approval.

PORT OF PORT TOWNSEND



PORT OF PORT TOWNSEND

MEETING OF: April 27, 2016
AGENDA ITEM: VIII. Other Business
A. Boat Yard Permit Update

BACKGROUND:

Staff will have attended the Department of Ecology Public Hearing on the new/revised Boat Yard Permit. Staff is working with the Northwest Marine Trades Association and the Washington Public Ports Association to develop formal comments which are due April 29, 2016. Latest status will be provided to the Commission.

Executive Director's Recommendation:

For information and discussion.

PORT OF PORT TOWNSEND

MEETING OF: April 27, 2016

AGENDA ITEM: VIII. Other Business
B. Point Hudson Breakwater

BACKGROUND:

The Port Commission directed that staff look at the possibility of doing something short of a full replacement of the Point Hudson Breakwater. The purpose being is to extend the life of the current structure essentially “buying” another ten to fifteen years before committing to a full replacement.

Attached is a scope of work staff received from Coast & Harbor who did the initial engineering on the project. The cost is \$11,800 for this effort. Before signing the scope of work, staff wanted to review one more time, to make sure the commission wants to commit to this process.

This is within the ED’s spending authority.

Executive Director’s Recommendation:

For discussion and action as appropriate.

**POINT HUDSON MARINA – BREAKWATER REPLACEMENT PROJECT
Amendment #2 - Breakwater Rehabilitation Phase 2 Conceptual Engineering**

SCOPE OF WORK

Introduction:

Port of Port Townsend (Port) requested Coast & Harbor Engineering (CHE) a division of Hatch Mott MacDonald to develop a scope for feasibility engineering in rehabilitating the existing breakwaters at the Point Hudson Marina facility in lieu of the replacement option. The existing breakwaters were constructed in the 1950's and are composed of a combination of timber pile, steel cable tiebacks and large armor stone. The Port is looking to extend the useful life of the existing breakwaters by 10-15 years before full replacement. The work will include determining which sections of the existing breakwaters are most critical for protection of the harbor as well as which sections are in highest need of repair or replacement. Conceptual construction costs and a pros/cons list of various rehabilitation alternatives will also be included to help the Port in determining a preferred rehabilitation alternative.

Assumptions:

- No regulatory permitting support.
- Engineering design not included.
- Existing data will be used, no new data collection will be required besides a site visit
- One site visit to get updated information on the existing condition.
 - Boat. Port will provide a boat for use by CHE if required during a site visit.
- Condition Assessment not part of the phase of work. Condition will be based on field observations.
- Meetings: One meeting with Port Staff in CHE Edmonds office.

Scope Tasks:

Task 500 – Breakwater Rehabilitation Feasibility Assessment

Scope:

- Site Visit: One site visit will be made to gather any additional information need on the existing condition to help with the following tasks.
- Critical Section Determination: Using existing information and previous work accomplished, CHE will determine which sections of the existing breakwater are most critical for continued operation in the harbor. In addition which sections are most in need of repair or replacement will be determined.
- Feasibility Engineering. Based on engineering experience and talking with contractors, CHE will determine repair or replacement alternatives that best suit the environment and the existing breakwater design.

- Rehabilitation Alternatives: CHE will discuss with local marine contractors on cost and constructible issues of various alternatives to present to the Port in determination of a preferred rehabilitation alternative.
- Conceptual Cost: Once a preferred alternative has been selected by the Port, CHE will create a conceptual construction cost estimate for Port planning purposes.
- *Task 500 Deliverable: MS PowerPoint file summarizing results of rehabilitation concepts and alternatives development. PDF copy of preferred alternative with graphic and estimated construction cost.*

Total Cost (Tasks 500)

\$11,800

CHE Contact

Shane Phillips, P.E.

Email: shane.phillips@mottmac.com

PH: 425-778-6042

Authorization

Port of Port Townsend: _____

Date: _____