

P.O. Box 1180 • Port Townsend, Washington 98368-4624

Administration: (360) 385-0656

Operations: (360) 385-2355

Fax: (360) 385-3988

**Port of Port Townsend
2nd Monthly Regular Meeting Agenda
Wednesday, May 25, 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 Meeting Minutes – May 6, 2016.....1
 - Approval of Special Public Workshop Minutes –May 9, 2016.....2-3
 - Approval of Special Meeting Minutes – May 9, 2016.....4-6
 - B. Resolution No. 646-16 Commission Code of Conduct.....7-9
 - C. Approval of Warrants
- IV. Public Comments (not related to Agenda)
- V. Second Reading (action items)
 - A. Professional Services Contract – Boat Haven Boatyard Stormwater System
 Planning & Conceptual Design.....10-27
 - B. Gatheringplace Letter of Intent.....28-33
- VI. First Reading (discussion only)
- VII. Potential Immediate Action Items (unanimous Commission approval required)
 - A. Kimmel’s Crab Shack Land Lease.....34-70
- VIII. Other Business
 - A. Changes to the Liveaboard Rules and Regulations.....71
 - B. Personnel Policy Manual.....72
- IX. Staff Comments
- X. Public Comments
- XI. Commissioner Comments
- XII. **Next Special Public Workshop/Special Meeting: Date: Wednesday, June 8, 2016 – workshop at 9:30 AM, meeting at 1:00 PM, Port Commission Building, 333 Benedict Street, Port Townsend, WA.**
- XIII. Executive Session (if called)
- XIV. Adjournment

PORT COMMISSION SPECIAL MEETING / PUBLIC FORUM – Friday, May 6, 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
Auditor - Berg
Minutes –Nelson
Attorney – Goodstein

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

Commissioner Hanke called the special meeting to order at 9:00 AM.

II PUBLIC FORUM FOR EXECUTIVE DIRECTOR CANDIDATES:

Ms. Berg explained the candidate forum format.

Panel members included former Mayor and Townsend Bay Marine owner David King, Jefferson County Chamber Director Teresa Verraes, local volunteer Bill Putney, Gordon Neilson who represented the tribes and the marine trades and local Quilcene volunteer/activist Linda Herzog. Executive Director Candidates included Josh Peters, Sam Gibboney and Greg Englin.

Following the question and answer session, Commissioner Hanke thanked the candidates, the panel members and the audience. He announced the meeting would recess into Executive Session to decide if they would need to bring the candidates back into the room for more questioning, and decide if there would be action. The meeting recessed into Executive Session at 11:56 a.m., possible action and duration of fifteen minutes, with possible extension.

III. RECESS TO EXECUTIVE SESSION:

The meeting recessed into Executive Session at 11:56 AM, returning with possible action and duration of fifteen minutes, with a possible extension, pursuant to RCW 42.30.110 (g).

At 12:15 p.m., it was announced to the waiting public the session would be extended another half-hour.

IV. RECONVENING OF REGULAR SESSION:

The regular meeting reconvened at 12:46 PM.

Commissioner Hanke explained in the Executive Session, more questions were asked of the candidates (each candidate was called in, one at a time, during the session). He announced there would be no decision today, as the commission would like to invite the public to contact each of them over the weekend to express their views. Commissioner Hanke then invited questions/comments from the audience. Audience members who spoke included Peninsula Daily News reporter Charlie Bermant, The Leader editor Scott Wilson, Bertram Levy and Karen Gale.

V. NEXT SPECIAL MEETINGS/PUBLIC WORKSHOP:

Monday, May 9, 2016: Special Public Workshop at 9:30 AM, Special Commission Meeting, at 1:00 PM in the Commission Building, 333 Benedict Street, Port Townsend, WA.

VI. ADJOURNMENT:

The Special Meeting adjourned at 12:51 PM with 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 PUBLIC WORKSHOP – May 9, 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
Executive Director – Crockett
Auditor – Berg
Director of Planning, Properties & Environmental - Toews
Attorney – Goodstein
Minutes - Nelson

I. CALL TO ORDER:

The Special Workshop was called to order at 9:30 AM.

II. AGENDA:

Refer to attached workshop agenda for items discussed.

III. EXECUTIVE SESSION WORKSHOP:

The public workshop recessed into an Executive Session Workshop at 9:55 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 10:57 AM.

ATTEST:

Peter W. Hanke, President

Brad A. Clinefelter, Secretary

Stephen R. Tucker, Vice President

**Port of Port Townsend
Special Public Workshop
Monday, May 9, 2016, 9:30 a.m.
Commission Building
333 Benedict Street
Port Townsend, WA**

AGENDA

➤ **Mapletree LLC:**

Mr. Paul Schutt has proposed the construction of up to three residential units on property adjacent to our Maintenance Shop at the west end of the Boatyard. He has provided the commissioners with copies of his proposal. Mr. Schutt has asked for an opportunity to make a presentation to the Commission.

➤ **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-- May 9, 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
Auditor – Berg
Director of Planning, Properties & Environmental – Toews
Attorney – Goodstein
Minutes – Nelson

I. CALL TO ORDER/PLEDGE OF ALLEGIANCE:

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

II. APPROVAL OF AGENDA:

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

III. CONSENT AGENDA (0:43):

- A. Approval of Meeting Minutes – April 27, 2016
Approval of Special Meeting Minutes – April 28, 2016
Approval of Special Meeting Minutes – April 29, 2016
Approval of Special Meeting Minutes – May 2, 2016
- B. Operations Reports – April 2016
- C. Approval of Warrants
Warrant #056093 through #056107 in the amount of \$62,518.37 for Payroll & Benefits
Electronic Payment in the amount of \$91,084.23 for Payroll & Benefits
Warrant #056108 through #056158 in the amount of \$81,776.35 for Accounts Payable
**Commissioner Tucker 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) (0:55):

Linda Herzog announced the sixth annual Last Day of School party at the Herb Beck Marina in Quilcene on June 15, 2016, time TBD. She asked for help to move large limbs and branches from a tree that fell on the beach recently in a storm.

V. SECOND READING (Action Items):

A. Commission Code of Conduct (2:52):

Mr. Crockett stated this was presented at the last commission meeting and recommends adoption.

Commissioner Hanke moved to adopt the Commission Code of Conduct as presented.

Commissioner Clinefelter seconded the motion.

Motion carried by unanimous vote.

(This will be presented in the form of a resolution at the May 25, 2016 commission meeting under the Consent Agenda.)

Melinda Bryden recommended adding to the Code of Conduct that a commissioner should not vote when he/she has a conflict of interest.

Mr. Crockett stated it should remain as presented, as the RCW is clear on this subject.

Tom Conley suggested the commissioner with a conflict should recuse him/herself from the vote and an attorney would recommend that.

Bill Curtsinger and Jim Fritz both stated they were comfortable that a commissioner with a conflict not recuse him/herself as he/she is a representative of the voters.

Bill Putney asked if this policy could be re-introduced each time a new commissioner comes in to office.

Mr. Crockett suggested re-adoption in January of each year.

B. Fine Yacht Interiors Lease (10:02):

Mr. Toews explained this is up for a second reading. Discussions at the last commission meeting resulted in a revision to the lease, with an inclusion of the the Hazardous Materials Warranty.

Commissioner Tucker moved to approve the lease with Fine Yacht Interiors as presented.

**Commissioner Clinefelter seconded the motion.
Motion carried by unanimous vote.**

C. Port Townsend Brewing Co. Lease (13:10):

Mr. Toews explained this lease is also up for a second reading. There have been no changes to this lease since it was first presented. He reminded that at the last meeting, the question arose as to why the brewery only was required to carry \$1M in liability insurance. Mr. Toews responded that in researching, he has been unable to find anywhere, where the standard practice is to require \$2M.

Commissioner Hanke moved to approve the Port Townsend Brewing Co. Lease as presented.

**Commissioner Clinefelter seconded the motion.
Motion carried by unanimous vote.**

VI. FIRST READING (Discussion Only):

VII. POTENTIAL IMMEDIATE ACTION ITEMS):

A. Executive Director Selection (16:15):

Commissioner Tucker moved to approve Executive Director Selection for immediate action.

Commissioner Clinefelter seconded the motion.

Motion carried by unanimous vote.

Commissioner Hanke commented that this is Mr. Crockett's second to last meeting here. He recognized three panel members present in the audience and thanked them – Gordon Neilson, Bill Putney and Linda Herzog. Commissioner Hanke reported the common denominator he kept hearing was how productive the forum was. He then invited Public Comments. Bill Curtsinger said he appreciated narrowing the candidates down to these particular three.

Commissioner Hanke stated there is no clear winner now. Mr. Crockett added that whoever is selected does not mean it is final and it all depends on a contract agreement.

Commissioner Tucker said he made his final decision just this morning.

Commissioner Clinefelter stated that has not been an easy task.

Commissioner Hanke stated he heard comments from people where they wish all three could be hired. He explained there are merits to being local and there are merits to having a port background and it will all come down to who would be the most effective at getting the job done.

Finally, each commissioner spoke his decision.

Commissioner Tucker discussed the difference in choosing a safe pick and one who carried a risk. In his opinion, he added, you need to take risks to receive rewards and for that, he chooses Greg Englin.

Commissioner Clinefelter stated he also received a lot of public feedback. He said the public forum was excellent. He explained he usually likes to see data and cost a cost analysis associated with some of the ideas presented. He explained he leans towards Sam Gibboney who carries a wide variety of skills and believes she can take our Port into the future.

Commissioner Hanke explained there is a difference between management and leadership and that for him, it has come down to Mr. Englin and Ms. Gibboney. He then stated he would like to enter into a contract with Ms. Gibboney.

Commissioner Hanke moved to select Sam Gibboney as the Port of Port Townsend's new Executive Director.

Commissioner Clinefelter seconded the motion.

Commissioner Clinefelter added he focused on Ms. Gibboney's strengths as opposed to the concerns he had with other candidates. He stated she has the capability and wherewithal to make tough decisions. He discussed the last rate increase voted in and stated he trusts Ms. Gibboney would be one to provide the commission with the best information in order to make the best choices. He pointed out she also has a degree in civil engineering.

Commissioner Hanke viewed Ms. Gibboney and Mr. Englin as having two different toolboxes. He is most comfortable with Ms. Gibboney's "tools" in moving forward with the tough decisions that lie ahead of the Port. Commissioner Hanke added that Mr. Englin has no engineering degree but has excellent management skills and that Ms. Gibboney has a box full of tools. He informed that Port tenant Pam LaNua, in an email, expressed

hope that the decision would be a unanimous one by the commission and he agreed with her.

Commissioner Tucker said his decision was so close that he would make it unanimous and now chose Ms. Gibboney.

Motion carried by unanimous vote.

VIII. OTHER BUSINESS:

A. Boatyard Stormwater Feasibility Study (37:25):

Mr. Crockett reported that seven total RFQs were received for the feasibility study. Al Cairns, Larry Aase, Eric Toews and he interviewed four firms. A unanimous decision was reached, and Parametrix was selected, pending a negotiated contract.

Mr. Toews stated he just received a bare bones scope of work prior to this meeting. He said he would have the scope of services to present at the next commission meeting. Mr. Toews described three phases in the scope, which will be a driver to achieve DOE benchmarks. Further discussion ensued.

IX. STAFF COMMENTS (37:10):

Ms. Nelson told the commission she believes they made a good decision on the ED selection, although she would have respected whatever the decision was. She looks forward to having Ms. Gibboney as her new boss.

Mr. Toews stated he appreciated the deliberations and the tough decision the commission faced.

Mr. Crockett reported he would attend the WA Public Ports Assoc. Annual Spring Meeting this week and will make a presentation on the small works roster.

X. PUBLIC COMMENTS (50:00):

Bill Putney thanked the commission for the hiring process, and gave special thanks to Ms. Berg. He added that it is time to get back to the Advisory Committee discussions. George Yount echoed Mr. Putney's comments and said this was the most organized process for hiring an executive director that he has witnessed. He stated it was a first class effort by the commission. He then thanked Mr. Crockett for his seventeen years as ED. He thanked the commissioners for their choice in hiring and for being open with their reasoning.

Ms. Berg (staff comment) thanked the commissioners for entrusting her and Mr. Crockett with developing the hiring process. She added that she appreciates the fact that the commission worked well together.

XI. COMMISSIONER COMMENTS:

Commissioner Tucker said the staff did a wonderful job with the process. He also added that the commission worked well as a group.

Commissioner Hanke stated the process went well and he looks forward to working with Ms. Gibboney.

XII. NEXT MEETING: Next regular meeting will be held Wednesday, May 25, 2016 at 5:30 PM in the Port Commission Building, 333 Benedict St, Port Townsend.

XIII. EXECUTIVE SESSION:

XIV. ADJOURNMENT:

The meeting adjourned at 1:55 PM, there being no further business to come before the commission.

ATTEST:

Brad A. Clinefelter, Secretary

Peter W. Hanke, President

Stephen R. Tucker, Vice President

RESOLUTION NO. 646-16

**A RESOLUTION OF THE COMMISSION OF THE PORT OF PORT TOWNSEND
ADOPTING A COMMISSION CODE OF CONDUCT**

WHEREAS, the Port of Port Townsend seeks to adopt rules governing commission conduct and values;

WHEREAS, the Commission of the Port of Port Townsend has the authority to adopt rules governing the transaction of business pursuant to RCW 53.12.245;

WHEREAS, pursuant to delegated authority, the Executive Director of the Port of Port Townsend has adopted a Personnel Manual setting forth standards of conduct and behavior of Port employees demonstrating the Port of Port Townsend's commitment to effective performance, good conduct and accountability;

WHEREAS, the Commission of the Port of Port Townsend desires to conduct the Port's official business with social and fiduciary responsibility that fosters and maintains the public trust;

WHEREAS, by representing and serving the Port's interests, Commissioners also represent and serve all citizens of Jefferson County, Port customers, and their constituents;

WHEREAS, the Commission of the Port of Port Townsend desires to commit itself to the values and standards it expects of its employees;

WHEREAS, the adoption of a Commission Code of Conduct will facilitate the transaction of Port business and will engender respectfulness, integrity, and accountability among the Commission, with Port employees, and with the public the Commission serves; and

WHEREAS, the values and commitments set forth herein are intended to uphold and protect the trust placed in the Port of Port Townsend both by the public and by Port employees;

NOW, THEREFORE BE IT HEREBY RESOLVED by the Port Commission of the Port of Port Townsend that:

The Commission Code of Conduct, dated May 9, 2016 is hereby approved, incorporated herein by this reference, and attached as Exhibit "A".

ADOPTED this 25th day of May 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:

Peter W. Hanke, President

Stephen R. Tucker, Vice President

Brad A. Clinefelter, Secretary

APPROVED AS TO FORM:

EXHIBIT "A":

Commission Code of Conduct

May 25, 2016

With accountability to the citizens of Jefferson County, as Port Commissioners we will conduct ourselves lawfully, with integrity and high ethical standards, also to establish a sustainable model of appropriate behaviors to build public confidence and credibility.

We will conduct the Port's official business with social and fiduciary responsibility that fosters and maintains public trust.

1. To build trust among citizens, fellow Commissioners and to ensure an environment conducive to effective governance, we will:
 - a. Focus on issues rather than personalities;
 - b. Exercise honesty in all written and interpersonal interaction, never intentionally misleading or misinforming each other;
 - c. Respect decisions of the "Commission" and will not undermine those decisions; a Commissioner may express his or her vote on an issue, but underscore that the decision of the "Commission" will move forward;
 - d. Come prepared to meetings, reading materials in advance, engaging with staff with questions prior to the meetings;
 - e. Make every reasonable effort to protect the integrity, and promote the positive image, of the Port and one another; and
 - f. Maintain confidentiality appropriate to sensitive issues and information that otherwise may tend to compromise the integrity of legal standing of the Commission and the Port of Port Townsend, especially those matters discussed in executive session.

2. We will not attempt to exercise individual authority over the organization. The Commission has hired an Executive Director to manage all aspects of the organization.
 - a. We will not attempt to assume personal responsibility for resolving operational problems or complaints;
 - b. We will not personally direct any and all parts of the operational organization;
 - c. We will not publicly express individual negative judgments about the staff performance; any such judgments of the staff performance will be expressed in executive session;
 - d. We will refer any requests for access to Port records to the Executive Director; and
 - e. We will treat Port employees with respect, using appropriate tone and language, when personal interaction (spoken and written) is involved.

3. We will serve the interests of the entire organization. We recognize this responsibility to the whole to be greater than:
 - a. Any loyalty a Commissioner may have as an elected official; or
 - b. Loyalty based upon public perception.

4. Process for Addressing Commissioner Violations. The Commission and each of its Commissioners are committed to faithful compliance with the provisions of the Commission's Code of Conduct. The Commission recognizes that its failure to deal with deliberate or continuing violations of its policies risks the loss of confidence in the Commission's ability to govern effectively. Therefore, in the event of an allegation of a Commissioner's extraordinary, willful and/or continuing violation of the Code of Conduct, the Commission shall investigate the issue and may use the following process:
 - a. Discussion in executive session between the alleged offending Commissioner and the full Commission per RCW 42.30.0110 (f) and upon request, Legal Counsel;

- b. If the Commission determines the alleged violation(s) are well founded, and that circumstances warrant action, the Commission may take appropriate action in public session to include, verbal warning, written warning, letter of censure, and or removal by the Commission from one or more leadership or committee positions to which the offending Commissioner has been appointed; (i.e., removal from President or Vice President standing, removal from representing the Port on various boards and committees).

PORT OF PORT TOWNSEND

MEETING OF: May 25, 2016

AGENDA ITEM: V. Second Reading
A. Professional Services Contract – Boat Haven Boatyard
Stormwater System Planning & Conceptual Design

BACKGROUND: In December of 2013, Landau Associates prepared a Revised Level 3 Engineering Report for the Boat Haven Boatyard. This document was required in accordance with the requirements of the Boatyard General Permit (Permit) issued by the Washington State Department of Ecology (ECY). The Port's current Permit was issued by ECY in March of 2011, in accordance with the National Pollutant Discharge Elimination System (NPDES), and became effective in June of that year. This Permit expires on May 31, 2016. The Permit requires that water quality samples be taken following "qualifying" storm events, and that the runoff concentrations of certain parameters (e.g., zinc, copper, etc.) be tested to determine whether or not they exceed "benchmark" concentration levels. The number of times benchmarks are exceeded during the five (5) year Permit duration determines whether Level One, Two or Three Response Actions are necessary.

In 2014 and 2015, the Port has expended significant labor and capital to improve its source controls, BMP enforcement and stormwater treatment infrastructure consistent with Landau's Level Three Response recommendations and thereby satisfied ECY's requirements. Despite these efforts, the Port continues to fall substantially short of the benchmarks established for both copper and zinc under the Permit, and remains under a Level Three Response requirement under the existing Permit.

ECY is currently updating the permit to include new discharge limits for certain parameters. The permit will likely be reissued during the summer or early fall of 2016 following consideration of public comments. In March of this year, ECY staff visited the Port to inform staff that, irrespective of the effective date of the new Boatyard Permit and the completion of Level Three Response in 2015, additional Level Three Response compliance measures would be necessary, and would be set forth within an Administrative Order forthcoming in early summer.

Clearly, revising a reconfigured and improved stormwater system is critically necessary to achieve regulatory compliance and to safeguard the jobs that depend upon this infrastructure. Additionally, the Port has a limited window of opportunity prior to receiving ECY's Administrative Order in which to shape the substance, as well as timing, of actions required under the order.

To seize this opportunity, the Port published a Request for Qualifications (RFQ) in April from engineering firms interested in preparing a stormwater study and the preliminary design for system improvements to serve the Boatyard. The Port received seven (7) consultant submittals

in response to its RFQ. On April 29 and May 2, Port staff interviewed four (4) firms. The staff interview team, comprised of Larry Crockett, Al Cairns, Larry Aase and Eric Toews determined that Parametrix Engineering, Planning & Environmental Services was the most qualified firm to conduct the requested work.

In conjunction with Port staff, Parametrix has developed a detailed scope of services and budget for Boat Haven Boatyard Stormwater System Planning and Conceptual Design. The project involves the assessment of the performance of current stormwater infrastructure, the development and evaluation of alternatives for additional source controls, operational and management changes, and system reconfigurations and capital improvements to assist the Port in meeting benchmarks under the Boatyard General Permit. The effort will result in a Level Three Response Engineering Report and Compliance Plan meeting the requirements of WAC 173-240, and completing the first element in ECY's pending Administrative Order.

Parametrix proposed to complete the work outlined in the attached Contract and Scope of Services for \$115,574.00, which is significantly less than was anticipated by staff. Parametrix will complete its draft report by the end of 2016 with the final report incorporating ECY's recommended revisions completed by March 31, 2017.

EXECUTIVE DIRECTOR'S RECOMMENDATION: Approve the attached Contract, Scope of Services and Budget.

Port of Port Townsend
Professional Services Agreement
For Port Townsend Boat Haven Boatyard
Stormwater System Planning & Conceptual Design

THIS AGREEMENT is entered into between the Port of Port Townsend, hereinafter referred to as the "PORT," and Parametrix, Inc., hereinafter referred to as "CONSULTANT," in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. **Project Designation.** CONSULTANT is retained by the PORT to prepare a stormwater system planning study and conceptual design for the Port of Port Townsend's Boat Haven Boatyard. The project involves the assessment of the performance of current stormwater infrastructure at the Boat Haven, and the development and evaluation of alternatives for additional source controls, operational and management changes, and system reconfigurations and capital improvements to assist the Port in meeting benchmarks under the Boatyard General Permit. As detailed more fully Attachment "A", Scope of Services, this planning effort will result in recommended operational changes and a Level Three Response Engineering Report and Compliance Plan that will assist the Port in both achieving benchmarks and complying with an administrative order anticipated from the Department of Ecology in late spring or early summer of this year.
2. **Consultant Qualification.** CONSULTANT warrants that it has the required skills to perform the work specified in this agreement, and warrants and represents that it has complied with all federal, state, and local laws regarding business permits and licenses that may be required to perform the work as set forth in this agreement.
3. **Scope of Services.** CONSULTANT shall provide the services as agreed upon with the PORT and detailed in Attachment "A" to this agreement.
4. **Time and Duration of Agreement.** This contract shall be for the period June 1, 2016 through March 31, 2017 unless otherwise terminated (see paragraph 13 below).
5. **Reimbursement.** CONSULTANT shall be compensated an amount not to exceed \$115,574.00 for the work performed hereunder. The PORT shall make no payments in advance or in anticipation of services or supplies to be provided under this agreement. A detailed Project Budget for which costs will be paid and expenses reimbursed is contained in Exhibit "A" to Attachment "A" referenced in paragraph 3, above.

Payment shall be made as follows:

CONSULTANT will provide either electronic or hard copy invoices to the PORT no more than once per month. Invoices should be sent to S. Abigail Berg, Director of Finance/Port Auditor. The PORT will pay invoices within 30 days of receipt, unless there is a question or need for additional documentation, in which case resolution will be sought expeditiously. The final invoice for payment under this agreement must be submitted to the Port no later than thirty (30) days from submission of the Final Feasibility Study to the PORT's project manager, subject to the PORT's approval of the Final Feasibility Study.

The PORT shall make no payments in advance or in anticipation of services to be provided under this agreement.

6. **Compliance with laws.** CONSULTANT shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations applicable to the services to be rendered under this agreement.
7. **Hold Harmless and Indemnification.** CONSULTANT shall indemnify and hold harmless the PORT, its officers, agents and employees, from and against any and all reasonable claims, losses or liability, or any portion thereof, including attorneys fees and costs, arising from injury, sickness, disease or death to persons, including injuries, sickness, disease or death to CONSULTANT or damage to property occasioned by a negligent act, omission or failure of the CONSULTANT.
8. **Insurance Requirements.** CONSULTANT shall obtain and keep in force during the entire term of this agreement, liability insurance against and all claims for damages to person or property which may arise out of the performance of this agreement, whether such work shall be by the CONSULTANT, sub-consultants, and/or their agents and/or employees. The CONSULTANT agrees to the following requirements relating to insurance coverage and shall provide evidence of all insurance required by submitting an insurance certificate to the PORT on a standard "ACORD" or comparable form:
 - a. **Commercial General Liability** – coverage on occurrence form CG0001 or equivalent with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
 - b. **Automobile Liability** – covering owned, non-owned and hired vehicles with minimum of \$1,000,000 combined single limit per accident; and
 - c. **Professional Liability** – a minimum of \$2,000,000 in the aggregate and \$1,000,000 per claim in professional liability insurance unless otherwise negotiated and confirmed in writing by both parties. Insurance coverage shall have a retroactive date before the date of notice to proceed and coverage shall remain in effect for the entire term of the agreement (plus three (3) years).

The insurance required by this agreement shall be issued by an insurance company authorized to do so in Washington State, and the policies shall name the PORT, its agents and employees as additional insured's; EXCEPT, however, that CONSULTANT is not required to add the PORT or its agents and employees as an additional insured on its professional liability policy or workers' compensation policy. All policies shall be primary to any other valid and collectable insurance and not contributory to any similar insurance carried by the PORT, and shall contain a severability of interest or cross liability clause. Such insurance shall not be canceled or materially altered without first giving thirty (30) days' written notice thereof to the PORT. The CONSULTANT shall submit renewal certificates as appropriate during the term of the agreement.

d. Excess Coverage – by requiring insurance herein, the PORT does not represent that coverage and limits will be adequate to protect CONSULTANT and such coverage and limits shall not limit CONSULTANT'S liability under paragraph 7, above.

9. **Independent Contractor.** CONSULTANT and the PORT agree that CONSULTANT is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. CONSULTANT shall not be entitled to any benefits accorded PORT employees by virtue of the services provided under this agreement. The PORT shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the State Industrial Insurance program, otherwise assuming the duties of an employer with respect to CONSULTANT.
10. **Assignment.** CONSULTANT shall not sublet or assign any of the services covered by this agreement without the expressed written consent of the PORT.
11. **Ownership and Use of Documents.** All documents and other materials produced by the CONSULTANT in connection with the services rendered under this agreement are the property of the PORT. The CONSULTANT shall be permitted to retain copies of such materials, as long as any use of such materials outside of work for the PORT is subject to written permission from the PORT. CONSULTANT shall not be held liable for reuse of documents or modifications thereof, including electronic data, by the PORT or its representatives for purposes other than the intent of this agreement.
12. **Drug-Free Workplace Policy.** The PORT has adopted a Drug-Free Workplace Policy that the workplace will be a drug free environment conducive to conducting the PORT's business free from unlawful manufacture, distribution, dispensing, possession or use of controlled substances. This policy applies to PORT Commissioners, PORT employees, and contractors conducting business on PORT property.

13. **Equal Opportunity Policy.** All persons or entities performing work for the PORT shall provide equal opportunity to all of its employees and applicants for employment and assure that there is no discrimination on the basis of race, color, region, national origin, sex, age, marital status, or physical disability unless based upon a bona fide occupational qualification. All persons or entities performing services for the PORT must insure that the foregoing extend to all areas of employment and to all relations with employees including recruitment, selection, placement, compensation, promotion and transfer, training, daily working conditions, awards and benefits, and all other terms and conditions of employment as provided for in state and national laws. CONSULTANT hereby agrees to abide by applicable regulations during the course of this agreement.
14. **Termination.** The PORT reserves the right to terminate this agreement at any time by giving ten (10) days written notice to CONSULTANT.
15. **Integrated Agreement.** This agreement together with attachments or addenda represents the entire and integrated agreement between the PORT and CONSULTANT and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument signed by both PORT and CONSULTANT.
16. **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 THE PORT:

Eric Toews, Director of Planning, Properties & Environmental/Project Manager
Port of Port Townsend
P.O. Box 1180
Port Townsend, Washington 98368
Phone: (360) 385-0656

TO THE CONSULTANT:

Parametrix, Inc.,
c/o Brandon Ball, P.E.
Project Manager
4660 Kitsap Way, Suite "A"
Bremerton, WA 98312
Phone: (360) 377-0014

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.

DATED this 1st day of June 2016.

CONSULTANT

PORT OF PORT TOWNSEND

Jennifer Young, Division Manager

Larry C. Crockett, Executive Director

Approved as to Form:

Port Attorney

SCOPE OF WORK

Port of Port Townsend Boat Haven Boatyard Stormwater System Planning and Preliminary Design

INTRODUCTION

The purpose of this project is to develop short- and long-term strategies to comply with the Boatyard General Permit. The project is described in three general phases:

- Phase 1: Data collection, site characterization, and data gaps assessment.
- Phase 2: Alternatives analysis and compliance plan development (Level 3 Response Engineering Report).
- Phase 3: Implementation of stormwater improvements. This is a future phase not included in this Scope of Work (SOW).

Project management is included throughout the project and is described in Phase 4.

WORK BREAKDOWN

Phase 1 – Data Collection, Site Characterization, and Data Gaps Assessment

Data evaluation, site characterization, and preliminary analysis of alternatives. The purpose of this Phase is to evaluate what is known (or not known) about the site and to evaluate available information in context with the data needed to make decisions for compliance alternatives. In addition, Task 2 includes evaluation of early actions (i.e., simple and relatively inexpensive alternatives) that can be implemented in a relatively short time period to reduce stormwater pollutant loading.

Task 1 – Data Collection, Site Characterization, and Data Gaps Assessment

Activities

Task 1 activities will include:

- Data collection. Conduct a kickoff meeting and site visit to collect available information and observe boatyard operations and BMPs. Obtain existing CADD files of base maps showing site infrastructure (catch basins, pipes, inverts, etc.), existing catchment areas, access and roadways, activity areas and types, outfall locations, off-site drainage, existing treatment systems, existing utilities, property boundaries, and future planning areas.
- Regulatory review and permitting impacts. Conduct a review of possible regulatory requirements with regards to construction near shorelines and consult with county agencies to gauge possible requirements they may impose on development. This will be initiated through a review of rules and regulations followed by phone communications with the appropriate agency representatives. The review will also consider the possibility of other permitting requirements, such as JARPA and SEPA.

SCOPE OF WORK (continued)

- Wetland screening analysis. Evaluate existing information and reports on site wetlands and determine potential status of the wetlands as a discharge receiving water for development or modification, or use for treatment.
- Perform limited data collection of site soils, groundwater levels, and infiltration rates (e.g., test pits) to support screening level evaluation of the infiltration alternative. Soil samples will be collected at each test pit for analysis in support of an infiltration design.
- Infiltration screening analysis. Perform a preliminary screening analysis of infiltration rate and assess potential feasibility of permitting upland bioinfiltration. Small-scale infiltration tests will be conducted at each test pit to evaluate infiltration rates. Testing will be conducted in accordance with the *Stormwater Management Manual for Western Washington (SWMMWW)*.
- Check for possible groundwater and/or tidal influence in areas considered for infiltration and/or wetland treatment. This screening includes installation of up to two piezometers at selected test pit locations. The piezometers will be installed by hand auger and include installation of transducers to measure the possible groundwater and/or tidal influence in the areas considered for infiltration. Parametrix will revisit the site to check status and collect data for up to two visits for a period of two weeks.
- Hydrologic modeling. Conduct preliminary stormwater flow modeling, using an Ecology-approved hydrologic model, to characterize stormwater flows at final discharge and individual basins.
- Stormwater characterization. Collect all available existing discharge data and characterize concentrations in Outfall A and upstream catch basins and vaults. Characterize existing treatment performance of sand filters, Stormwater Rx™, downspout treatment, etc. Plot data on a timeline versus actions taken.
- Soil contaminant characterization. Collect and review existing soils data for copper and zinc levels.
- Prepare a characterization data gaps analysis and prepare an approach to address gaps (i.e., sampling plans, activity area assessment for sources, etc.). Identify activities, such as cleaning or repairing stormwater conveyance lines that should be completed prior to collecting additional stormwater data.

Deliverables

Task 1 deliverables will include:

- Technical Memorandum (TM) containing results and recommendations from data gaps analysis. The TM will also include results and recommendations from screening level evaluation of wetlands and infiltration. This TM will include the field test results from the infiltration testing and soil sampling. Once data is obtained from the piezometers, the report will be supplemented with this information.
- Sampling plan specifying locations, frequencies, analytical methods, and sampling protocols for data gaps sample collection.

Assumptions

- Existing site plan, drainage basin map, and stormwater system drawings provide sufficient detail and are available in AutoCAD. No additional survey is included.
- No more than three test pits will be excavated and up to three soil samples per location will be collected for laboratory analysis. The Port will provide a backhoe and operator and test pits will be excavated as far as the reach of the equipment, typically to a minimum of 10 feet below ground surface.

- Up to two piezometers will be installed at test pit locations. The piezometers will be hand augured down another 5 feet and transducers will be installed for monitoring. The cost of transducer rental is included.
- Infiltration testing will be conducted in the same day as the test pits are excavated. Parametrix will arrange for the rental of a water truck but it is assumed that a water source is available on site for filling.
- Cost for any additional data gaps sampling and analysis, beyond what is covered in this SOW, (e.g., stormwater sampling, hot spot sampling) will be provided by the Port.

Task 2 – Identification and Evaluation of Early Action Alternatives

Activities

Task 2 activities will include:

- Early actions. Develop alternatives for early actions that could include operational controls; additional source controls; treatment system adjustments; alternative monitoring strategies; system cleaning; contaminated soil (hot spot) removal; additional storage or pretreatment; targeted treatment systems (e.g., downspout box treatment); user education; illicit discharge, spills, or rule violation enforcement; materials retrofitting (e.g., change roofing materials); or other measures with low capital costs likely to improve conditions. Early actions will be considered along with long-term alternatives described in Phase 2. See Phase 2, Task 1 description for evaluation criteria that will be applied to both short- and long-term alternatives.
- Staff workshop. Conduct workshop with Port staff to evaluate existing operations and the site analysis described in Task 1 to find opportunities to make compliance improvements. Examples include site activities; known problem areas and activities; site layout and opportunities to make changes; tenant or user education and cooperation; existing material sources, such as rooftops; treatment operations; and other considerations to evaluate all phases of operations to find opportunities for improvements and assess unworkable options that should be avoided.

Deliverables

- Technical memorandum summarizing results, selection, and implementation schedule for early actions.

Assumptions

- One full day workshop, led by Project Manager and Sr. Consultant, will be conducted at the Boat Haven Boatyard.

Task 3 – Ecology Discussion Support

Activities

Task 3 activities will include:

- Support the Port in their discussion with Ecology on the Administrative Order (Order) to avoid unworkable conditions, help define the compliance schedule, and help define the compliance attainment standards and demonstration. Can include adaptive management to allow the timing for improvements to take effect, scheduling capital projects, discussing AKART and engineering report processes, and evaluating any conditions or measures that could limit the Port's options or dictate specific, costly strategies.

Assumptions

- A total of 24 professional hours have been budgeted to assist with Ecology discussion support.
- Budget includes one Ecology meeting attended by Project Manager and Sr. Consultant.

Phase 2 – Alternatives Analysis and Compliance Plan Development (Level Three Response Engineering Report)

The purpose of this Phase is to break down the site and its operations and assess all of the measures available to improve controls, modify operations, evaluate treatment options, change drainage systems, modify monitoring, and assess discharge approaches with the purpose of finding the clearest path to compliance with the Order.

Task 1 – Alternatives Analysis and Engineering Report Development

Task 1 activities will include:

- Identify project compliance needs and definition for compliance success.
- Identify alternatives, addressing pretreatment, source and operational controls, conveyance, storage, treatment alternatives, and discharge locations.
- Discharge and receiving water analysis. Evaluate the potential discharge locations. Quantify site discharge capacity needs and evaluate the potential capacity of each discharge option (POTW, existing marine outfall, additional storage for delayed discharge, infiltration and groundwater assessment). Consider alternative monitoring points. Evaluate conveyance and drainage system routing and evaluate opportunities and constraints. Evaluate vacant, available, or preferred sites for passive treatment systems (notably bioretention, infiltration, and constructed wetlands) and estimate required sizes.
- Low Impact Design. Apply the Port of Tacoma Low Impact Design feasibility analysis to the Boat Haven Boatyard to identify and evaluate its applicability and findings at the Port.
- Develop evaluation criteria for compliance alternatives, including factors such as cost, ability to meet capacity needs, treatment effectiveness, ease of implementation, permissibility, O&M, etc.
- Apply evaluation criteria to screen and narrow the list of alternatives.
- Prepare performance assessments and cost estimates for shortlisted alternatives.
- Assess compliance and risk management and conduct cost-benefit evaluation.
- Select preferred alternative and develop prioritized implementation strategy.
- Develop Level 3 Response Engineering Report meeting the requirements of Boatyard General Permit and WAC 173-240, *Submission of Plans and Reports for Construction of Wastewater Facilities*.

Deliverables

Results of all Phase 1 and Phase 2 task activities will be documented in a Level 3 Response Engineering Report in two draft versions and one final version:

- The draft Engineering Report will be submitted to the Port for review and comments.
- The draft-final report will incorporate Port comments and will be submitted to Ecology.
- The final Engineering Report will incorporate comments from Ecology.

Assumptions

- Engineering Report will be in accordance with WAC 173-240 and include basis of design, site plan, conceptual layout, sizing, planning-level cost estimates, summary of applicable information from previous Level 3 Engineering Report, and summary of activities and results from Phase 1 and Phase 2 work.
- The Engineering Report will present the selected alternative and a phased approach for implementation and monitoring.
- Permitting and detailed plans, specifications, and engineering (PS&E) are not included. These services will be covered in Phase 3 in a future scope of work.
- One meeting with the City of Port Townsend (Sewer Utility) is included to discuss and review stormwater discharge requirements, capacities, and other information. Meeting will be attended by Project Manager and Sr. Engineer.
- One working meeting with the Port to address questions and comments on the draft Engineering Report.
- The budget assumes that only minor revisions to the Engineering Report will be required based on Port and Ecology review.

Phase 3 – Implementation of Stormwater Improvements

This Phase will include services for permitting, design, and construction of the selected stormwater improvements. The scope of services for this phase will be identified in a future scope of work.

Phase 4 – Project Management

Project management will be provided through all phases of the project and will include:

- Administer project activities including staff coordination, resource allocation, client communication, cost tracking, schedule tracking, task order monthly reporting, management review of deliverables, internal project technical meetings, conference calls with the Port, and quality control/quality assurance requirements for completing project deliverables.
- Weekly phone calls with the Port's Project Manager to update status on project activities and deliverables.
- In addition, the Project Manager will attend the kickoff meeting/site visit, Ecology meeting, meeting with Port Townsend Public Utility, and Engineering Report review meeting. The scope and budget for these meetings is covered in other tasks.

Deliverables

- Project management deliverables include monthly progress reports describing effort completed, budget expended, planned activities for the month ahead, and schedule reporting.

Assumptions

- Project management is budgeted through completion of Phase 1 and Phase 2 activities (approximate duration of 8 months).

SCOPE OF WORK (continued)

BUDGET

Table 1 presents Parametrix’s proposed budget for each task described in this Scope of Work. The budget assumes work will be completed within the time period described in the proposed schedule and includes all Parametrix staff labor and expenses to complete each task. A detailed breakdown of labor rates, hours, and expenses is included in the attached Exhibit A. The estimated budget and level of effort are based on Parametrix’s understanding of the project and services. Parametrix proposes to perform this work on a time and materials, not to exceed basis. Parametrix will regularly keep the Port apprised of completion estimates as the project progresses.

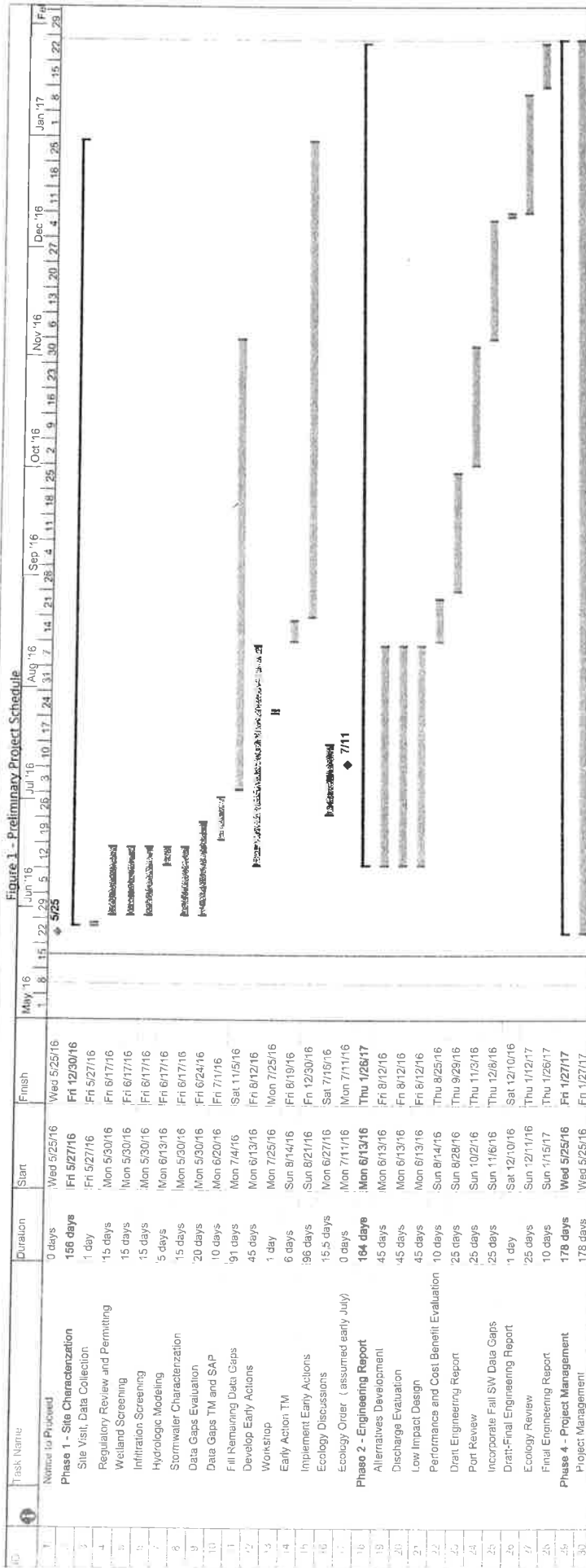
Table 1. Budget Proposal

Task	Description	Parametrix Labor	Expenses	Total
Phase 1 – Data Collection, Site Characterization, and Data Gaps Assessment				
1	Site Visit, Data Collection	\$5,402	\$190	\$5,592
1	Regulatory Review and Permitting	\$2,701	\$0	\$2,701
1	Wetland Screening	\$2,413	\$0	\$2,413
1	Infiltration Screening	\$6,085	\$3,088	\$9,173
1	Hydrologic Modeling	\$4,381	\$0	\$4,381
1	Stormwater Characterization	\$4,942	\$0	\$4,942
1	Data Gaps Evaluation	\$2,046	\$0	\$2,046
1	Data Gaps TM and SAP	\$6,101	\$0	\$6,101
2	Develop Early Actions	\$2,857	\$0	\$2,857
2	Workshop	\$5,629	\$305	\$5,934
2	Early Action TM	\$5,868	\$0	\$5,868
3	Ecology Discussions	\$5,629	\$305	\$5,934
Subtotal Phase 1		\$54,055	\$3,887	\$57,942
Phase 2 – Alternatives Analysis and Compliance Plan (Level 3 Engineering Report)				
1	Alternatives Development	\$12,288	\$0	\$12,288
1	Discharge Evaluation	\$4,627	\$184	\$4,811
1	Low Impact Design	\$1,883	\$0	\$1,883
1	Performance and Cost Benefit Evaluation	\$9,233	\$0	\$9,233
1	Engineering Report	\$22,423	\$305	\$22,728
Subtotal Phase 2		\$50,454	\$489	\$50,943
Phase 4 – Project Management				
1	Project Management	\$6,211	\$477	\$6,689
Subtotal Phase 4		\$6,211	\$477	\$6,689
GRAND TOTAL		\$110,721	\$4,853	\$115,574

SCHEDULE

A preliminary schedule showing all tasks is shown in Figure 1. The schedule assumes notice to proceed by May 25, 2016, and meets the Port's objective of having a draft Engineering Report completed for submittal to Ecology before the end of 2016. The schedule in Figure 1 may change based on specific requirements of the Administrative Order with Ecology. Another key assumption in the schedule is that the draft Engineering Report will be developed and submitted to the Port for review in October. Any remaining data gaps for stormwater can be filled in the late fall and incorporated into a draft-final report for submittal to Ecology in December 2016.

Figure 1 - Preliminary Project Schedule



Task	Project Summary	Manual Task	Start-only	Deadline
Split	Inactive Task	Duration-only	Finish-only	Progress
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress
Summary	Inactive Summary	Manual Summary	External Milestone	

Exhibit A
Budget Details

Exhibit A - Port of Port Townsend Boat Haven Boatyard Stomwater System Planning and Preliminary Design

LABOR

Phase-Task	Description	Categories	PM, B Ball	Sr Consultant, P. Fendt	Engineer IV Brandt	Engineer III, M. Adams	Sr. Scientist, J. Myers	CADD Operator II, J. Corraldo	Word Proc., A. Lucas	Admin, M. Wray	Engineer II M. Wilde	Sr Engineer, Dinkuhn	Sr Planner S. Phelps	Labor Amount
		Burdened Rates	\$233.73	\$235.39	\$162.91	\$136.46	\$180.64	\$76.80	\$87.39	\$75.23	\$103.71	\$206.14	\$153.89	
1-1	Site Visit, Data Collection		8	8										\$5,402
1-1	Regulatory Review & Permitting		2	4		6						8	3	\$2,701
1-1	Wetland Screening		2	4		4	6						2	\$2,413
1-1	Infiltration Screening		4	2	24	14						14		\$6,085
1-1	Hydrologic Modeling		8	6							16			\$4,381
1-1	Stormwater Characterization		2	2		8								\$2,046
1-1	Data Gaps Eval		2	16		4		8						\$8,101
1-1	Data Gaps TM and SAP		2	6	6									\$2,657
1-2	Develop early actions		12	12										\$5,699
1-2	Workshop		6	16					8					\$5,668
1-2	Early Action TM		12	12										\$5,629
1-3	Ecology Discussions		8	16	16	24	4							\$12,288
2-1	Alternatives development		8	8		8						6		\$4,627
2-1	Discharge Evaluation		8	8		8								\$1,883
2-1	Low Impact Design		8	2		20						20		\$9,233
2-1	Performance and Cost Benefit eval		40	12		50		16	24					\$22,423
2-1	Engineering Report		24											\$6,211
4-1	Project Management		148	122	48	138	10	24	40	8	16	50	5	\$110,721
TOTAL														

Exhibit A - Port of Port Townsend Boat Haven Boatyard Stomwater System Planning and Preliminary Design

EXPENSES

Phase-Task	Description	Categories	Rates	mileage	copies	plots	fax	color prints	Air	Lodging	Meals	Soils Lab	Equip Rental	Field Supplies	Misc	Expenses	
1-1	Site Visit, Data Collection			300													
1-1	Regulatory Review & Permitting							\$5.00									\$165
1-1	Wetland Screening																
1-1	Infiltration Screening			100													
1-1	Hydrologic Modeling																
1-1	Stormwater Characterization																
1-1	Data Gaps Eval																
1-1	Data Gaps TM and SAP																
1-2	Develop early actions																
1-2	Workshop			300													
1-2	Entry Action TM																
1-3	Ecology Discussions			300													
2-1	Alternatives development																
2-1	Discharge Evaluation			200													
2-1	Low Impact Design																
2-1	Performance and Cost Benefit eval																
2-1	Engineering Report			300													
4-1	Project Management			300													
				1800													
TOTAL																	
Total with 15% Markup																	
																1200	
																	700
																	\$4,220
																	\$4,853

PORT OF PORT TOWNSEND

MEETING OF: May 25, 2016

AGENDA ITEM: V. Second Reading
B. Gatheringplace Letter of Intent (LOI)

BACKGROUND: On January 27, 2016, Linda Ferris, Executive Director of Gatheringplace presented a conceptual proposal for expansion of their use into a new purpose built structure at Point Hudson. The proposed building site is located immediately adjacent and to the west of the Duplex Building, outside the shoreline jurisdiction, and north of vacated Jefferson Street. As is the case with all of Point Hudson, the proposed building site is located in the City's M-II(B) zoning designation, which is intended to chiefly accommodate marine-related and water-oriented uses, but makes limited allowance for certain non-marine-related and non-water-oriented .

Gatheringplace has occupied the south half of the Duplex for approximately thirteen years (13) as a home for its enrichment programs for adults with developmental and other disabilities. They have now outgrown that location. For the past seven (7) years, they have made their popular dog biscuit product at a space in the Skookum Building at the Boat Haven. Skookum has notified Gatheringplace that this space is now needed for its own laundry operations.

At the January 27th Commission meeting, Ms. Ferris presented a conceptual drawing of the proposed future facility, and Mr. Jim Rozanski, the architect retained by Gatheringplace, requested a formal Letter of Intent (LOI) from the Port. The Commission endorsed moving forward with the proposal. Staff indicated that a draft long-term lease would be presented at a subsequent meeting. However, following the meeting, it was discovered by staff that an amendment to the text of the City's Zoning Code would be required in order for the proposal to move forward into permitting, and therefore, entry into a long-term lease was premature.

Staff has prepared a draft LOI that has been reviewed by Mr. and Ms. Ferris. The LOI seeks to clarify the roles and responsibilities of both the Port and Gatheringplace, as well as the necessity of obtaining approval of a zoning text amendment from the City in order for the project to proceed. The LOI would also have the effect of assisting Gatheringplace to gain access to potential grant monies while it moves ahead through the City's legislative and project permitting process.

EXECUTIVE DIRECTOR'S RECOMMENDATION: Authorize Executive Director to execute a Letter of Intent, substantially¹ in the form presented, regarding the proposed future development and long-term lease of property at Point Hudson to Gatheringplace.

¹ Discussions with Gatheringplace regarding the final detailed provisions of the LOI are ongoing. Limited changes to the LOI presented may occur as a result of these discussions.

DRAFT

**LETTER OF INTENT (LOI):
Between the Port of Port Townsend & Gatheringplace
For Development & Lease of an Area Adjacent & West of the “Duplex
Building” at Point Hudson**

May 2016

1. The Port of Port Townsend (“Port”) is a Washington port district and municipal corporation, and is the owner of the Point Hudson property.

2. Gatheringplace is a Washington nonprofit organization providing enrichment programs for the community with an emphasis on adults with developmental and other disabilities. Gatheringplace currently occupies the southern portion of the “Duplex Building” at Point Hudson.

3. Gatheringplace desires to develop and lease an area immediately adjacent and west of the “Duplex Building” at Point Hudson as a long-term home for its programs and activities. A drawing of the specific areas subject to this Letter of Intent (LOI) is contained in Exhibit A attached hereto (the “Property”).

4. This “LOI” is intended to outline the general terms of the understanding between the parties regarding the future development and long-term lease of the Property (the “Project”). The general terms of the understanding are stated as follows:

a. The Port agrees in principle to the development and long-term lease of the Property by Gatheringplace.

b. Gatheringplace intends to conduct a due diligence inquiry regarding the development of the Property, and may elect to terminate this LOI at any time.

c. Gatheringplace will raise all funds necessary to develop the Property, including but not limited to zoning text amendment(s), planning, design, permitting, and construction.

d. Gatheringplace expressly understands that the Project requires a text amendment to Port Townsend Municipal Code (PTMC) §17.08.020, “Definitions”, and/or §17.22.020(E), “Marine-Related and Manufacturing Districts - Permitted, Conditional and Prohibited Uses”, in order for the project to proceed.

e. The development plans and specifications for the Property, and all material changes thereto, will be subject to Port Commission

review and approval as consistent with Port's development guidelines and policies with respect to the Property, prior to Gatheringplace seeking permits or entitlements from the City of Port Townsend, and before any building materials have been ordered by, or delivered to, Gatheringplace or under Gatheringplaces' authority.

f. Prior to making application to the City of Port Townsend for a zoning code text amendment, Gatheringplace will deliver to the Port, for the Port's review and approval, the draft line-in/line-out amendments to PTMC §17.08.020 and/or §17.22.020(E) that it intends to submit to the City. It is expressly understood that the Port, as the owner of the Property, will be "the applicant" for the text amendment, but that all fees and costs associated with this legislative change will be borne by Gatheringplace.

g. Following approval (if granted) of the zoning code text amendment by the City, but prior to submitting development applications, Gatheringplace will deliver to the Port for the Port's review and approval two (2) sets of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of Washington, including the following:

- i. Preliminary grading and drainage plan;
- ii. Stormwater management plan;
- iii. Engineered site plan with survey;
- iv. Utilities locations and power upgrade plan;
- v. Proposed sewer and water service connections;
- vi. Proposed locations of ingress and egress to and from public thoroughfares;
- vii. Proposed exterior lighting design;
- viii. Proposed locations for employee/client parking; and
- ix. Proposed building design.

The preliminary construction plans and specifications should be of sufficient detail to enable potential contractors and subcontractors to make reasonably accurate bid estimates and to enable the Port to make an informed judgment about the design and quality of construction.

h. Gatheringplace agrees that its development plans and specifications will reflect that those portions of the Property to be used in future for client parking. Gatheringplace further agrees that its development plans and specifications will reflect that the approximately 7,000 square foot area immediately west of the "Duplex Building" at Point Hudson will serve as the location for its proposed new facility.

i. The Port reserves the right, in its sole discretion, to approve or disapprove the preliminary plans and specifications. The Port will not unreasonably withhold approval of preliminary plans and specifications, but will

have the right to withhold approval if it finds that the improvements are not consistent with the highest and best use of the Property or that the improvements are not harmonious with the improvements constructed in the immediate vicinity.

j. Gatheringplace understands and agrees that it must procure and deliver to the Port, prior to the commencement of construction, evidence of compliance with all then applicable codes, ordinances, regulations and requirements for permits and approvals, including, but not limited to: a grading permit; building permits; zoning and land use approvals, including critical areas permits; environmental (e.g., and State Environmental Policy Act, RCW 43.21C) determinations, and approvals from various governmental agencies and bodies having jurisdiction over the premises.

k. After procuring and delivering to the Port all required permit approvals, but prior to commencing construction activities, the Port will grant a long-term (e.g., 25 year) lease of the Property to Gatheringplace. The parties agree that Gatheringplace will own all improvements it constructs on the Property through the expiration or sooner termination of such long-term lease, and that the Port will retain a reversionary interest in the improvements.

l. Gatheringplace agrees that it will maintain and operate the facilities constructed on the Property continuously and in a first class manner through any future lease term.

5. This LOI does not contain all essential terms of the agreement to be entered into by the parties regarding the Property (e.g. the future long-term Lease Agreement). The parties shall not be bound to any development agreement or other agreement, nor to any particular terms of any such agreements, and the parties will have no liability to one another with respect to such agreements or any particular terms thereof, unless and until final definitive written agreements containing all essential terms of the transaction are negotiated and approved by the parties' respective boards, and signed by the parties.

6. For the duration of this LOI (as defined in paragraph 6, below) the parties will engage in exclusive negotiations with one another regarding the development of the Property; PROVIDED, that the parties are permitted to also have discussions with governmental and other regulatory agencies and lending institutions regarding the development of the Property. The parties will work diligently to fulfill the general terms of the understanding outlined herein, and to complete the negotiation of a long-term Lease Agreement for the Property by December 31, 2017.

7. The duration of this LOI shall begin on the date signed by both parties, and shall end on the earliest of the following:

- a. The date that the Port and Gatheringplace enter into final long-term Lease Agreement for the Property; or
- b. The date either party withdraws; or
- c. December 31, 2017.

The duration of this Amended LOI may be extended for additional periods by written agreement of the parties.

8. During the time that the parties are negotiating a final long-term Lease Agreement and supporting documents, Gatheringplace will commit substantial resources to procure a zoning text amendment, and if such amendment is granted, to evaluate, design and plan the construction project, including but not limited to engineering and architectural design, and environmental and geotechnical review. The Port will also be committing resources to the project, including, but not limited to, review and approval of proposed amendatory language to the Port Townsend Municipal Code, conceptual designs and specifications and other materials provided by Gatheringplace, negotiation with Gatheringplace regarding the final long-term Lease Agreement, and support of the Project. If this LOI terminates and Gatheringplace does not develop the Property, then Gatheringplace will convey and assign to the Port all of its ownership interest in, and all other right, title, and interest of Gatheringplace in and to, all reports, studies, designs, plans, permits, and other documents resulting from those efforts, and all other documents and information related to the investigation and development of the Property; PROVIDED, HOWEVER, that Gatheringplace shall not be required to provide or convey or assign to the Port any document or information to the extent protected by attorney work product or attorney/client privilege; and PROVIDED FURTHER, that such assignment shall not preclude Gatheringplaces' use of any part or all of such documents or information.

9. This LOI contains the entire understanding of the Parties with respect to its subject matter and supersedes any and all other written or oral understandings. No amendment, change, or modification of this LOI shall be valid, unless in writing and signed by the parties hereto.

10. The Parties agree that no failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. No waiver of any provision of this LOI shall be valid unless in writing and signed by the party charged with the waiver.

11. If any provision of this LOI is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this LOI, and such invalid provision shall

be deemed deleted herefrom to the minimum extent necessary to cure such violation.

12. This LOI shall be construed and interpreted in accordance with and shall be governed and enforced in all respects according to the laws of the State of Washington, without regard to conflict of law principles, and venue of any action or proceeding regarding this LOI shall be in Jefferson County, Washington.

13. This Amended LOI does not confer any rights or benefits on any person or entity other than the undersigned Parties, and may not be assigned.

LOI dated this _____th day of May 2016, and effective upon the signature of the parties.

GATHERINGPLACE
A Washington State Non-Profit Corporation

BY:

AND BY:

Robert Ferris, President
Board of Directors

Linda Ferris, Founding Director

PORT OF PORT TOWNSEND
A Washington State Municipal Corporation

Larry Crockett, Executive Director

APPROVED AS TO FORM

Port Attorney

PORT OF PORT TOWNSEND

MEETING OF: May 25, 2016

AGENDA ITEM: VII. Potential Immediate Action Items
A. Kimmel's Crab Shack Land Lease

BACKGROUND:

In October of 2015, the Port's part-time engineer, Harold Anderson, conducted a facility condition assessment for the "New Day Fisheries" building located on the New Day spit at 2427 Washington Street. The building has been used by New Day Fisheries for seafood processing and sales since 1987. Mr. Anderson's assessment documented numerous building deficiencies requiring an estimated \$264,000 (approx.) to maintain a state of "good repair".

During the preparation of the Port's draft Capital Repair and Replacement Plan in late 2015, it was concluded by staff that the subject structure had exceeded its anticipated useful lifespan. Moreover, staff determined that the extensive repairs identified by Mr. Anderson were unwise given that the cost of such repairs could never be recovered through a market rate lease. However, the Lessee (New Day Fisheries, Scott Kimmel) expressed interest in purchasing the structure and assuming responsibility for its long-term repair and maintenance.

Accordingly, on January 19, 2016, Port Executive Director, Larry Crockett, made written certification to the Commission that the New Day Fisheries Building was no longer needed for port district purposes. On the same date, and after proper public notice and hearing, the Port Commission approved Port Resolution Number 637-16, which amended its Comprehensive Scheme of Improvements to surplus the New Day Fisheries Building. In doing so, the Commission concluded that the building was unnecessary for current or future Port operations, and expressly authorized the Executive Director to sell or dispose of the property "*in the best manner which he, in his discretion, shall determine, including by negotiated transfer for consideration.*"

At the time of adoption of Resolution No. 637-16, it was believed that the three adjoining buildings on the spit south of the dock at 2427 Washington Street had not been constructed by, and were not owned by, the Port. These contiguous structures (the "Westerly New Day Fisheries Buildings"), which include concrete block structure, a freezer unit, and a wood framed/partially enclosed weight room) were of uncertain ownership and origin, and not identified explicitly within the Port's adopted Scheme of Improvements. To resolve any potential ambiguity, the Port's Executive Director made written certification to the Commission that these buildings too, like the principal building previously determined to be surplus, were no longer needed for port district purposes. After timely and effective notice and public hearing, the Commission approved Port Resolution No. 642-16 concluding that these buildings were not needed for current or future Port operations, and authorized the Executive Director to

sell or dispose of these contiguous structures along with the principal building previously addressed via Resolution No. 637-16.

Consistent with the authority granted under Resolutions No. 637-16 and 642-16, Port staff has negotiated transfer of all the aforementioned structures to Mr. Scott Kimmel, President of Kimmel's Crab Shack, LLC. The agreed upon purchase price for all four structures is \$90,000. A Quitclaim Deed conveying the structures to Mr. Kimmel's LLC, and legally severing the buildings from the underlying real property will be executed concurrent with execution of the lease described below. The proposed consideration of \$90,000 is determined by the Executive Director to be adequate, given the extensive deferred maintenance costs associated with these buildings, and a market appraisal prepared by Peter Shorett of Kidder-Matthews in June of 2015.

Mr. Kimmel is presently renting the New Day Spit and associated buildings on a month-to-month basis. In return for the purchase of the structures described above, Mr. Kimmel desires to enter into a long-term (i.e., 50-year) land lease for his business located at 2427 Washington Street. In staff's judgment, the proposed lease terms and conditions satisfy the needs of Mr. Kimmel, while safeguarding the long-term interests of the taxpayers of Jefferson County.

The proposed 50-year Land Lease encompasses approximately 21,000 square feet located on the "spit" at 2427 Washington Street. The proposed 50-year lease term is consistent with the Port's authority under RCW 53.08.080, and is necessary in order for Mr. Kimmel to justify purchase of the structures. Read together, paragraphs 8, 9, 10, 11 and 12 of the draft lease make plain that the Port will either be returned tenantable structures or bare ground at the end of the lease term. Moreover, paragraph 15 of the proposed lease provides the discretion necessary to deal with potential damage or destruction of the premises occasioned by climate-change induced sea level rise/storm surge damage.

In most other respects, the terms and conditions of the Port's standard lease agreement apply, including the Port's standard Hazardous Substances Warranty and Agreement, which has been incorporated as Exhibit "C".

Executive Director's Recommendation:

Waive second reading, and authorize Executive Director to approve the new fifty (50) year lease with the Port Townsend Brewing Company, Inc. Consistent with Resolutions 637-16 and 642-16, consideration will be received, and a Quitclaim Deed will be conveyed, concurrent with execution of the lease.

PORT OF PORT TOWNSEND LAND LEASE

THIS LEASE AGREEMENT made this 1st day of June 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 KIMMEL'S CRAB SHACK, LLC, a Washington Limited Liability 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, more particularly depicted upon Exhibit "A" which is attached hereto and incorporated herein by this reference, and which is briefly described as follows:

AN APPROXIMATELY 21,000 SQUARE FOOT AREA LOCATED
UPON A PORTION OF HASTINGS 2ND ADDITION, BLOCKS 24 &
25, LOTS 1-8 (TAX LOT 110) CITY OF PORT TOWNSEND

The Port hereby warrants that it has good and marketable fee title to the premises and has full right and authority to execute this Ground Lease and to demise the premises. The four (4) buildings located on the premises and described in Exhibit "B" attached hereto and incorporated herein by this reference, have been purchased by Lessee from the Port of Port Townsend and are the property of Lessee.

2. **TERM:** This Lease shall be for a term of fifty (50) years, beginning on June 1, 2016 and ending on May 31, 2066.
3. **RENT:**
 - a. Lessee agrees to pay as rental for the leased premises the sum of **One Thousand Two Hundred and Seven Dollars and Fifty Cents (\$1,207.50)** plus all applicable taxes.
 - b. Beginning on June 1, 2019 the rental rate may be adjusted to the fair market rental rate for the premises based on the fair market rental rate then prevailing for comparable commercial and/or industrial premises in the Western Washington area, bearing in mind all allowable uses of the property and all services and amenities available to the premises 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 if the parties cannot agree.

- c. Except in years when a fair market rate adjustment is made as set forth in Subparagraph (b) of this Paragraph 3, above, the rental rate beginning in year two (2) and annually throughout the term of this Lease will be adjusted by an amount equal to the percentage change over the prior year 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.
 - d. In no event shall any rent adjustment under Subparagraphs (b) or (c) of this Paragraph 3 result in a reduction in rent from the rate paid in the prior year.
 - e. 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 the main office of the Port or at such place as the Port may hereafter designate.
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. This provision for a "late charge" and the Port's acceptance of payment of such charges shall not be construed as a waiver of Lessor's right to declare this Lease in default if a rent payment is not paid when due.
5. **DEPOSIT:** Upon the execution of this Lease, Lessee shall deposit with the Port two month's rent in the amount of Two Thousand Seven Hundred and Twenty-Five Dollars and Eight Cents (\$2,725.08). This Lease shall not be effective until full deposit of the required amount is made with the Port. If Lessee defaults in any particular the Port may use, apply or retain all or any part of the security (1) to the extent of any sum due to the Port, or (2) to make any required payment on Lessee's behalf, or (3) to compensate the Port for any expense or damage caused by Lessee's default. On the Port's demand, Lessee shall promptly pay to the Port a sum equivalent to the amount by which the security was so depleted. On the fifth (5th) anniversary of this Lease and every five (5) years thereafter, the amount of such security deposit shall be increased in the same proportion as the annual rental is increased above the basic rent charged during the first (1st) year of the lease term.
6. **USE OF PREMISES:** Lessee shall use the premises for the processing and 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 in a first class manner

continuously during the entire term of this Lease, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or 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 inconsistent with the processing and retail and wholesale sales of fish.

7. **UTILITIES:** Lessee shall be liable for, and shall pay throughout the term of this Lease, all charges for all utility services furnished to the premises, including, but not limited to light, heat, electricity, gas, water, sewerage, garbage disposal and janitorial services. In the event that the premises are part of a building or are part of any larger premises to which any utility services are furnished on a consolidated or joint basis, Lessee agrees to pay to the Port its (Lessee's) pro rata share of the cost of any such utility services, and Lessee's pro rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of costs shall not be required.
8. **ACCEPTANCE OF PREMISES:** Lessee has examined the leased premises and accepts them in their present condition. No representations have been made by or on behalf of the Port as to the condition of the improvements that are located on the leased land. Lessee fully understands that those improvements were constructed by prior leaseholders and not by the Port. The Port has made no representations regarding the soils under the buildings and improvements, nor has the Port made any representations regarding the suitability of the land for any additional improvements contemplated by Lessee. Except for the warranties of title and quiet enjoyment implied in any lease, the Port makes no warranties whatsoever regarding the premises and hereby specifically disclaims any and all such warranties.
9. **EXISTING IMPROVEMENTS ON THE PREMISES:** The Port has agreed to lease the premises for a long term in exchange for the Lessee's commitment to maintain all improvements (Port-owned and Lessee-owned) in a manner consistent with normal practice in a comparable situation, reasonable wear and tear excepted. Consistent with Paragraph 10, below, Lessee agrees that all improvements upon the premises will be maintained in good condition throughout the term of this Lease and that they will be surrendered to the Port in substantially the same condition as at the commencement of this Lease, normal wear and tear excepted, subject to Paragraphs 11 and 12 below.

10. MAINTENANCE AND REPAIR:

- a. Throughout the term of this Lease, the Lessee shall, at Lessee's sole cost and expense, maintain the premises and all improvements (Port-owned and Lessee-owned) in good condition and repair, and in accordance with all applicable laws, rules, ordinances, orders and regulations. Lessee shall, at its' own expense, and at all times:
- i. Keep the premises, and the adjoining roadways and walkways, neat, clean and in a safe and sanitary condition;
 - ii. Keep the glass of all windows and doors thereof clean and presentable;
 - iii. Maintain and keep the leased premises in a good state of repair;
 - iv. Not commit waste of any kind;
 - v. Replace all cracked or broken glass in the premises;
 - vi. Keep the electrical system and the sprinkler system and all pipes and drains clean and in a good state of repair;
 - vii. Protect the sprinkler system and all pipes and drains so that they will not freeze or become clogged;
 - viii. Remove all snow and ice from the walkways adjacent to the premises/buildings and all snow and ice from the roofs thereof; and
 - ix. Make all necessary repairs to the roofs (structures or coverings), to the foundations of the buildings or structures and exterior walls of which the premises are a part.
- b. Except as expressly provided in Paragraph 15, Subparagraph (c), below, Lessee shall promptly and diligently repair, restore and replace as required to maintain and comply as above, or to remedy all damage to or destruction of all or any part of the improvements upon the leased premises from any causes whatsoever. The completed work of maintenance, compliance, repair, restoration or replacement shall be equal in value, quality and use to the condition of the improvements before the casualty giving rise to the work, except as expressly provided to the contrary in this Lease. The Port shall not be required to furnish any services or facilities or to make any repairs of any kind on or in the premises. Notwithstanding the foregoing, at the end of this Lease, the Port acknowledges that the improvements will likely show substantial wear and tear, and despite reasonable maintenance, that the improvements will effectively be given by the Lessee to the Port at the end of the Lease, and that only in the case of substantial waste or neglect which renders the improvements unusable for the processing and retail and wholesale sales of fish, shall Lessee be held responsible for any further repair, restoration or removal of the improvements.

- 11. ALTERATIONS AND IMPROVEMENTS:** In the event that Lessee elects to construct additional or replacement improvements on the premises or make alterations to any improvements on the premises, and obtains the Port's written consent for such additions or reconstruction or alterations, all decisions to construct improvements or alterations on the premises shall reflect a reasonable review of the highest and best use of the premises at the time construction is commenced and for the foreseeable future. The Port's written approval will be obtained before any major construction is commenced on the premises, and before any building materials have been ordered or delivered to the premises by Lessee or under Lessee's authority, Lessee shall comply with all of the following conditions or procure the Port's written waiver of the condition or conditions specified in the waiver. The Port shall have the right to post and maintain on the premises any notices of non-responsibility provided for under applicable law, and to inspect the premises in relation to the construction at all reasonable times.
- a. **Plans and Specifications.** Lessee shall deliver to the Port for the Port's review and approval two (2) sets of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of Washington, including, but not limited to, preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas and landscaping, all sufficient to enable potential contractors and subcontractors to make reasonably accurate bid estimates and to enable the Port to make an informed judgment about the design and quality of construction and about any effect on the reversion. All improvements shall be constructed within the exterior property lines of the demised premises, PROVIDED that required work beyond the premises on utilities, access and conditional use requirements do not violate this provision. With the plans, Lessee shall deliver to the Port the certificate of the person or persons who prepared the plans and specifications, certifying that Lessee has paid for them or waiving payment and waiving any right to a lien on the premises.
 - b. **Port Approval.** The Port reserves the right, in its sole discretion, to approve or disapprove the preliminary plans and specifications. The Port shall not unreasonably withhold approval of preliminary plans and specifications, but shall have the right to withhold approval if it finds that the improvements are not consistent with the highest and best use of the premises or that the improvements are not aesthetically pleasing or harmonious with the improvements constructed in the immediate vicinity. Approval or disapproval shall be communicated in the manner provided for notices, and disapproval shall be accompanied by specification of the grounds for

disapproval, PROVIDED that the Port's failure to disapprove within fifteen (15) days after receipt of the plans and specifications shall be conclusively considered to be Port approval.

- c. Use of Licensed and Bonded Contractor. Lessee shall use a licensed and bonded contractor for all improvements or alterations to the demised premises. Lessee shall furnish the Port with a true copy of Lessee's contract with the contractor. The contract shall give the Port the right, but not the obligation, to assume Lessee's obligations and rights under that contract if Lessee should default.
- d. Required Governmental Permits. Lessee shall procure and deliver to the Port, prior to the commencement of construction, evidence of compliance with all then applicable codes, ordinances, regulations and requirements for permits and approvals, including, but not limited to: a grading permit; building permits; zoning and land use approvals, including critical areas permits; environmental (i.e., State Environmental Policy Act, RCW 43.21C) determinations, and approvals from various governmental agencies and bodies having jurisdiction over the premises.
- e. Evidence of Regulatory Compliance. Upon completion of construction, Lessee shall provide the Port with copies of all certificates of completion, certificates of occupancy, and as-built plans evidencing regulatory compliance.

- 12. OWNERSHIP OF IMPROVEMENTS:** All improvements constructed on the premises by Lessee as permitted by this Lease shall be owned by Lessee until expiration of the term or sooner termination of this Lease. Lessee shall not, however, remove such improvements from the premises without the Port's prior written permission. The four (4) buildings described in Exhibit B and purchased by Lessee from the Port shall be owned by Lessee and may be removed by Lessee at any time during this Lease. The parties covenant for themselves and all persons claiming under them that the improvements are real property. At the expiration of the term or sooner termination of this Lease, with respect to improvements constructed or installed on the premises during the term of this Lease, the buildings themselves, the ceiling cranes and all electrical, plumbing, heating, air conditioning and other building systems and any drapes, carpeting, and installed appliances, but not Lessee's freely moveable personal property, or any compressors (other than for the heating and air conditioning systems), shall, without compensation to Lessee, then become the Port's property, free and clear of all claims by Lessee or any third person, and Lessee shall defend and indemnify the Port against all liability and loss arising from such claims or from the Port's exercise of the rights conferred by this Paragraph 12. Notwithstanding the terms of this Paragraph 12, the Port may, at the expiration or earlier termination of this Lease, demand the removal from the

premises any part or all of the improvements or fixtures that have been subject to casualty, or substantial waste or neglect, and which therefore are no longer usable for the processing and retail and wholesale sales of fish. At the expiration of the term or sooner termination of this Lease, with respect to the four (4) buildings purchased by Lessee from the Port, the buildings themselves, the ceiling cranes and all electrical, plumbing, heating, air conditioning and other building systems and any drapes, carpeting, and installed appliances, but not Lessee's freely moveable personal property, or any compressors (other than for the heating and air conditioning systems), shall be removed from the premises by Lessee, unless the Port in its sole and absolute discretion agrees in writing that they may remain on the premises, in which case they shall, without compensation to Lessee, then become the Port's property, free and clear of all claims by Lessee or any third person, and Lessee shall execute such deed or other documents reasonably requested by the Port to evidence such transfer of ownership to the Port, and Lessee shall defend and indemnify the Port against all liability and loss arising from such claims or from the Port's exercise of the rights conferred by this Paragraph 12. The cost of all removal required or permitted by this paragraph shall be borne solely by the Lessee.

13. **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 one hundred and eighty (180) days prior to the expiration or sooner termination of this Lease.

14. **POSSESSION:** If the Port shall be unable for any reason to deliver possession of the premises, or any portion thereof, at the time of the commencement of the term of this Lease, the Port shall not be liable for any damage caused thereby to Lessee, nor shall this Lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Lessee shall not be liable for any rent until such time as the Port can deliver possession, PROVIDED, that if Lessee shall, in the interim, take possession of any portion of the premises, it shall pay as rental the full rental specified herein reduced pro rata for the portion of the premises not available for possession by Lessee, AND PROVIDED FURTHER, that if the Port shall be unable to deliver possession of the premises at the commencement of the term of this Lease, Lessee shall have the option to terminate this Lease by at least thirty (30) days written notice,

unless the Port shall deliver possession of the premises prior to the effective date of termination specified in such notice. If Lessee shall, with the Port's consent, take possession of all or any part of the premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable.

15. DAMAGE OR DESTRUCTION:

- a. Except as expressly provided in Subparagraph (c) of this Paragraph 15, below, Lessee shall promptly and diligently repair, restore and replace as required to remedy all damage to or destruction of all or any part of the improvements upon the leased premises from any causes whatsoever. The completed work of repair, restoration or replacement shall be equal in value, quality and use to the condition of the improvements before the casualty giving rise to the work. Lessee shall also promptly take all steps necessary to assure that the leased premises shall be and remain safe and the damaged improvements not constitute a hazard or danger to persons or property from the time of the fire or other casualty.
- b. The Port may in its discretion abate or suspend the rent in consideration of the particular hardship or incapacity of Lessee.
- c. If not later than sixty (60) days after the occurrence of a fire or other casualty which causes substantial damage to the improvements, Lessee, using reasonable judgment and in reliance upon professional estimates and advice, determines that such full repair and/or restoration is either (i) physically impossible, or (ii) PROVIDED that Lessee has fulfilled all of the hazard insurance requirements set forth in Paragraph 17 of this Lease, the available insurance proceeds are less than eighty percent (80%) of the cost of such repair and/or restoration, then Lessee may terminate this Lease by written notice to the Port given within such sixty (60) day time period. Such termination notice shall not, however, be effective until sixty (60) days after the date upon which it is received by the Port, during which time the Port shall have the opportunity to seek an adjustment from the insurer so as to increase the amount of available insurance proceeds, arrange for such repair and/or restoration at a cost sufficiently low so as to avoid condition (ii) of the preceding sentence, or design a partial restoration of the improvements which would be sufficient to provide Lessee with improvements of reasonably equivalent quality and floor area to not less than eighty percent (80%) of the improvements as they existed immediately prior to such fire or other casualty; and in any of the foregoing cases by written notice of such action to Lessee within such additional sixty (60) day period the Port may render Lessee's

termination notice null and void. If the Port shall fail to so nullify the termination notice, then this Lease shall terminate at the expiration of such sixty (60) day period after the Port's receipt of Lessee's termination notice, and any proceeds of insurance payable to Lessee on account of such fire or other hazard shall be paid as provided in Subparagraph (d) of this Paragraph 15, below.

- d. If this Lease is early terminated under Subparagraph (c) of this Paragraph 15, above, the Port shall be entitled to the proceeds of all insurance collected, after deduction of the following: the Lessee's costs of demolition and removal of the damaged and unusable improvements, and the filling and grading of the premises; and, the Lessee's then current book value for the improvements.

16. INDEMNIFICATION AND HOLD HARMLESS: The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained, or alleged to have been sustained by the Lessee or by others as a result of any condition (including existing or future defects in the premises) or occurrence whatsoever related in any way to the premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the premises and of the areas adjacent thereto except to the extent attributable to the negligence or other wrongdoing of the Port or its employees, contractors or agents. Lessee agrees to defend, indemnify, and to hold and save the Port harmless from all liability and expense (including, but not limited to attorney's fees and other costs of litigation) in connection with any such items of actual or alleged injury or damage.

17. INSURANCE: Lessee agrees to maintain during the lease term 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. Throughout the term of this Lease, at Lessee's sole cost and expense, Lessee shall keep or cause to be kept insured, for the mutual benefit of the Port and Lessee, all improvements located on or appurtenant to the premises against loss or damage by fire and such other risks as are now or hereafter included in an extended coverage endorsement in common use for industrial structures, including vandalism and malicious mischief. The amount of insurance shall be sufficient to prevent either the Port or Lessee from becoming a co-insurer under the provisions of the policy, but in no event shall the amount be less than \$250,000 (herein called the "insurable value"). The Port shall not be required to carry any insurance coverage on the premises. Lessee may include the holder

of any mortgage on the leased premises as a loss payee. The Port shall, at Lessee's cost and expense, cooperate fully with Lessee to obtain the largest possible recovery in the event of any insurance claim. Except as expressly provided in Paragraph 15, Subparagraphs (c) and (d), above, all policies of fire and extended coverage insurance required by this Lease shall provide that the proceeds shall be payable to Lessee as follows:

- i. Insurance proceeds shall be paid first to make all necessary repairs to restore the improvements to their condition prior to the insured casualty. Payments of insurance proceeds for repair, restoration or reconstruction of the improvements shall be held in a trust account approved by the Port and be disbursed monthly on architect's certificates until the work is completed and accepted.
 - ii. Any insurance proceeds remaining after complying with the provisions of this Lease relating to maintenance, repair and reconstruction of improvements shall be the Lessee's sole property.
- b. 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 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, and contractual liability.
 - c. 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 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.
 - d. Workers Compensation Insurance as required by Washington law 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, with minimum limits of liability as required by such laws and in no event less than \$1,000,000 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 Lessee shall provide a complete copy of all insurance policies to the Port at the Port's request. The conditions set forth in Subparagraphs (a), (b), (c), and (d) of this Paragraph 17 shall be met prior to occupancy.

18. **WAIVER OF SUBROGATION:** The Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, PROVIDED that this Paragraph 18 is effective only to the extent that the insurance company(ies) actually pay(s) for such injury, loss or damage, and, PROVIDED FURTHER, that this Paragraph 18 shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of the Port or Lessee.
19. **INCREASE IN COST OF INSURANCE:** Lessee shall not use the demised premises in such a manner as to increase the existing rates of insurance applicable to the improvements 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 leased premises, and to the extent allocable to the term of this Lease, may be added to the amount of rental hereinabove specified and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.
20. **HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT:** Lessee has examined the Hazardous Substance Warranty and Agreement, consisting of six (6) pages, which is attached hereto as Exhibit "C" and which, by this reference, is incorporated herein as fully set forth herein, and acknowledges full understanding of its obligations under said Hazardous Substances Warranty and Agreement.
21. **TAXES:** Lessee shall be liable for, and shall pay throughout the term of this Lease, all license and excise fees and occupation taxes covering the business conducted on the premises, and all taxes on property of Lessee on the leased premises and any taxes on the leased premises or leasehold interest created by this Lease Agreement and any taxes and assessments based on the premises or any improvements located thereon.
22. **COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS:** Lessee agrees to comply with all applicable rules and regulations of the Port pertaining to the improvements 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 local laws, rules, regulations, ordinances, permits and permit requirements, orders, and decrees of all governmental bodies having authority over the premises or any improvements located thereon or any

activity conducted thereon, as currently in effect or as may be hereafter amended or issued. Lessee shall defend, indemnify, and hold the Port harmless against all claims, costs (including but not limited to attorney fees), fees, fines, penalties, liabilities, losses, and damages that the Port may incur by reason of any charge, claim, litigation, or enforcement action related to any actual or claimed violation of any of the foregoing. Lessee further agrees that all improvements, approved by the Port will be properly permitted by the City and/or County. Any fees for any inspection of the premises during or for the lease term by any federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

23. ASSIGNMENT OR SUBLEASE: Lessee shall not assign or transfer this Lease or any interest therein nor sublet the whole or any part of the premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, otherwise, without the written consent of the Port first had and obtained. If Lessee is a corporation, Lessee further agrees that if at any time during the term of this Lease more than one-half (1/2) of the outstanding shares of any class of stock of Lessee corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this Lease or to members of their immediate families, such change in the ownership of the stock of the Lessee shall be deemed an assignment of this Lease within the meaning of this Paragraph 23. If the Port shall give its consent to any assignment or sublease, this Paragraph 23 shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent. The Port's consent will not unreasonably be withheld.

24. EASEMENTS:

a. The parties recognize that the Port's 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 premises leased by 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 significantly impact or deprive the Lessee from its beneficial use or occupancy of the leased premises.

- b. In the event that the Port does significantly impact the Lessee from such beneficial use or occupancy, then there will be an equitable adjustment in rent. In the event that the Port does permanently deprive the Lessee from such beneficial use or occupancy, then 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.

25. 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. After such stored property has been stored for a period of thirty (30) days or more, the Port shall have the right to sell such property PROVIDED, however that Lessee shall be given fifteen (15) days' notice in writing of the Port's intent to sell such property. The proceeds of such sale of stored property shall 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 that 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.

26. **TERMINATION FOR GOVERNMENT USE:** In the event that the United States Government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the premises or any part thereof, the Port may, at its option, terminate this Lease as of the date of such taking, and, if Lessee is not in default under any of the provisions of this Lease on said date, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.
27. **TERMINATION BECAUSE OF COURT DECREE:** In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.
28. **SIGNS:** No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted or within the leased premises, including the windows and doors thereof, without the approval of the Executive Director of the Port first had and obtained. At the termination or sooner expiration of this Lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the premises, and correct any unsightly condition, caused by the maintenance and removal of said signs, etc.
29. **INSOLVENCY:** If Lessee shall file a petition in bankruptcy, or if Lessee shall be adjudged bankrupt or insolvent by any court, or if a receiver of the property of Lessee shall be appointed in any proceeding brought by or against Lessee, or if Lessee shall make an assignment for the benefit of creditors, or if any proceedings shall be commenced to foreclose any mortgage or any other lien on Lessee's interest in the premises or on any personal property kept or maintained on the premises by Lessee, the Port may at its option, terminate this Lease.
30. **WAIVER:** No word, act or omission of the Port shall be deemed to be a waiver of any default or noncompliance by Lessee under the terms of this Lease or of any right of the Port hereunder or of any notice given by the Port hereunder unless the Port so advises Lessee in writing. 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 25 hereof.

31. **PRIOR AGREEMENTS:** This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement, letter of intent or understanding pertaining to any such matter will be effective for any purpose. No provisions of this Lease may be amended or added to, except by an agreement in writing signed by the parties or their respective successors in interest.
32. **ATTORNEY FEES AND COSTS:** In the event either party requires the services of an attorney in connection with enforcing or interpreting the terms of this Lease, or in the event suit is brought for the recovery of any sums due under this Lease or for the breach of any covenant or condition of this Lease, or for the restitution of the premises to the Port or eviction of the Lessee during the lease term or after the expiration thereof, the substantially prevailing party is entitled to reasonable attorney fees and all costs incurred in connection therewith, including, without limitation, the fees of accountants, appraisers and other professionals, whether at trial, on appeal or without resort to suit.
33. **VACATION OF PREMISES – HOLDING OVER:** In the event that no new lease has been negotiated and executed by the parties (or their successors) prior to the termination of this Lease, and upon written notice from the Port given at any time prior to the expiration of the term, Lessee shall promptly vacate the premises on or before the last day of the term, leaving the premises in the condition described in Paragraph 34, below. If Lessee holds over after the expiration or earlier termination of this Lease without the express written consent of the Port, Lessee will be a tenant at sufferance only and otherwise subject to the terms, covenants and conditions herein specified, insofar as applicable, except that the monthly rent will be one hundred fifty percent (150%) of the rent applicable during the last rental period under this Lease. Tenant shall also pay its share of then current additional rent, prorated on a daily basis. Acceptance by the Port of rent after the expiration or earlier termination of this Lease will not result in a renewal of this Lease. The forgoing provisions of this section are in addition to and do not affect the Port's right of re-entry or any other rights of the Port hereunder or otherwise provided by law. Lessee hereby

indemnifies and agrees to hold the Port harmless from all loss, injury or liability arising from Lessee's failure to surrender the premises upon the expiration or earlier termination of this Lease.

- 34. SURRENDER OF PREMISES:** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, will not work a merger, and will, at the option of the Port, operate as an assignment to it of any or all subleases or subtenancies. Upon the expiration or earlier termination of this Lease, Lessee shall peaceably surrender the premises and all of the alterations and additions thereto, leave the premises clean, in as good order, repair and condition as was provided to Lessee on the commencement date, reasonable wear and tear excepted, and Lessee shall comply with the provisions of Paragraphs 11 and 12, above. The delivery of keys to any employee of the Port or to the Port's agent or any employee thereof shall not be sufficient to constitute a termination of this Lease or a surrender of the premises.
- 35. 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.
- 36. 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.
- 37. NOTICES:** All notices hereunder may be personally 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:
KIMMEL'S CRAB SHACK LLC
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 received or refused by the addressee.

38. **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.
39. **"LESSEE" INCLUDES LESSEES, ETC.:** It is understood and agreed that for convenience the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Lease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Lessee or Lessee under this Lease Agreement.
40. **CAPTIONS:** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
41. **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.
42. **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.

43. **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.

44. LABOR UNREST: Lessee agrees to join with the Port and use its best efforts in avoiding labor unrest, or in the event of a wildcat strike or other labor difficulty, to use its good offices in negotiating and bringing to a swift and satisfactory conclusion any kind of labor dispute that may affect the interests of the Port.

45. SUCCESSORS AND ASSIGNS: Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease are binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns. If the Port sells or otherwise conveys its title to the premises, then after the effective date of such sale or conveyance, the Port will have no further liability under this Lease to Lessee except as to matters of liability which have accrued and are unsatisfied as of the date of sale or conveyance, and Lessee must seek performance solely from the Port's purchaser or successor in title. The Port's successor will have all rights of the Port, as Landlord, hereunder.

Lease Agreement dated this 1st day of June 2016 is hereby approved by the Port of Port Townsend, on this 25th day of May 2016 and effective upon the receipt of a deposit and insurance documentation from the Lessee.

LESSEE, KIMMEL'S CRAB SHACK LLC

Scott Kimmel, President

PORT OF PORT TOWNSEND

APPROVED AS TO FORM

Larry Crockett, Executive Director

Port Attorney

**STATE OF WASHINGTON
COUNTY OF JEFFERSON**

I certify that I know or have satisfactory evidence that Scott Kimmel signed this instrument and that he/she is authorized to execute the instrument and acknowledged it to be his/her 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: _____

EXHIBIT "A"
DESCRIPTION OF THE PREMISES

[MAP OF THE 15,000 S.F. LEASED AREA RESERVED
TO BE COMPLETED PRIOR TO LEASE EXECUTION]

EXHIBIT "B"
**DESCRIPTION OF LESSEE-OWNED BUILDINGS UPON THE
LEASED PREMISES**

The four (4) structures described below have been purchased by Lessee from the Port of Port Townsend and are the property of Lessee. The four (4) structures described below are to be maintained in a state of good repair by Lessee, as specified under the relevant terms of the Lease.

General Description: Four (4) structures together comprising approximately 12,061 square feet of floor space, located near or upon the "New Day" spit within Hastings 2nd Addition to the City of Port Townsend, Jefferson County, WA, on a portion of Blocks 24 and 25, Lots 1-8 (Tax Lot 110), and specifically excluding the underlying real property which remains in Port of Port Townsend ownership.

Specific Building Descriptions:

1. The structure commonly known as the "New Day Fisheries Building", a steel and concrete block building of approximately 10,200 square feet in size (60' wide by 170' long), located at 2427 Washington Street;
2. The "Westerly New Day Fisheries Buildings", consisting of three adjoining buildings comprising approximately 1,861 square feet and situated on the spit south of the loading pier at 2427 Washington Street, including:
 - a. An approximately 1,240 square foot concrete block structure with a composition roof and concrete floor;
 - b. An approximately 465 square foot attached freezer unit presently used for storage; and
 - c. An approximately 156 square foot wood framed/partially enclosed weight room.

Map Location of Buildings to be Maintained by Lessee: Refer to the map on the following page for the location of Lessee-owned buildings upon the leased premises.

EXHIBIT "C"
HAZARDOUS SUBSTANCES WARRANTY AND AGREEMENT

RIDER TO LEASE AGREEMENT DATED: _____, 2016, BETWEEN THE PORT OF PORT TOWNSEND and KIMMEL'S CRAB SHACK, LLC ("Lessee").

IT IS HEREBY AGREED THAT THE LEASE AGREEMENT IDENTIFIED ABOVE SHALL BE SUPPLEMENTED AND MODIFIED AS FOLLOWS:

1. **HAZARDOUS SUBSTANCES ON PREMISES.** Without the express written permission of the Port, Lessee shall not store, use or have present on or adjacent to the premises any Hazardous Substances. Hazardous Substances means a reportable quantity of any hazardous, toxic, dangerous or extremely dangerous substance, material, vapor, or waste, pollutant, or pollution, which is or becomes regulated by the United States Government, the State of Washington, or any local governmental authority applicable to the leased property. The term includes, without limitation, any substance containing constituents of the foregoing.

Except that Lessee may store, use, or have present on the premises the following:

2. **STORAGE AND USE OF HAZARDOUS SUBSTANCES.** Lessee agrees at all times to restrict its storage and use of substances identified in Paragraph 1 to the inside of the permanent building(s) at the premises, and specifically to those locations within such buildings(s) having concrete flooring or such other impermeable flooring as the Port may, in its sole discretion, approve in writing upon request by Lessee.
3. **HANDLING AND DISPOSAL.** The Lessee agrees to use said substances identified in Paragraph 2 only on areas which have impermeable surfaces and or other means for preventing accidental contact by such substances with the soils upon the leasehold or its surrounding area.
4. **RELEASES OF HAZARDOUS SUBSTANCES PROHIBITED.** Lessee, its officers, employees, contractors, agents, licensees, invitees, and assigns, shall not Release, dispose of, or permit a Release of any Hazardous Substances onto the premises or into the environment surrounding the premises, whether said Release is caused by intentional or unintentional acts, omissions, negligence, or otherwise. As used in this Lease, the term "Release" shall be defined as provided in 42 U.S.C. 9601

and RCW 70.105D.020. In the event a conflict exists between the two definitions, the broader definition shall apply. For purposes of this lease, the term Release shall also include a threatened Release.

5. **REGULATORY COMPLIANCE.** Lessee warrants and agrees that, during the term of this Lease and any extensions thereof, it will take all steps necessary to comply with all applicable federal, state and local requirements, including without limitation laws, rules, regulations, ordinances, permits and permit requirements, orders, decrees, and other governmental requirements regarding the proper and lawful generation, use, sale, transportation, storage, treatment and disposal of Hazardous Substances, (hereinafter "Laws"), on or in any manner which affects the premises. Lessee shall, at its sole cost and expense, comply with all Laws. Lessee shall obtain any required federal or state hazardous waste generator or transporter identification numbers. Lessee shall provide to the Port a copy of each such existing permit, license, and identification number before occupancy, and shall provide a copy of any such permit, license, and identification number which Lessee may obtain in the future within seven (7) days of receipt by Lessee.
6. **DISPOSAL OF HAZARDOUS WASTES.** In the event Lessee has occasion or need to dispose of Hazardous Substances or wastes, and unless otherwise agreed in writing, Lessee shall retain an independent hazardous waste disposal firm to dispose of any and all such substances at an off-site facility which has been properly approved, licensed and authorized to accept such substances. Lessee shall ensure that the disposal firm is properly licensed and in good standing with the applicable regulatory authorities for such work, and that it has all required transporter identification numbers.
7. **LESSEE'S WARRANTY OF NO CONTAMINATION.** Except as may be disclosed in Attachment No. 1 hereto, Lessee warrants and represents that it has (1) inspected the premises and is not aware of any indication that a Release of any Hazardous Substances has ever occurred at the premises, including prior to Lessee's occupancy, (2) that it has never been formally accused or cited, at the premises or elsewhere, for any violation of environmental laws, regulations or any hazardous waste-related governmental permit, and (3) that no claims or litigation have ever been pending against it by any person or governmental agency involving any use, storage, Release or disposal of Hazardous Substances. If any such Releases, formal accusations, citations, claims or litigation against Lessee arise during the term of this lease or any extension thereof, then Lessee shall notify the Port in writing within seven (7) days of such event, and shall provide the Port with a copy of each document reflecting such event.
8. **INDEMNIFICATION AND HOLD HARMLESS.** Lessee shall indemnify and hold the Port harmless with respect to any and all direct or indirect expenses, losses of damages, including all consequential damages, Attorney's fees, and litigation-

related expenses and costs, incurred by the Port which result from (1) Lessee's breach of provision of this Rider, (2) claims, actions, suites, proceedings, judgments, fines or remedial orders (including orders to clean up contamination at the premises) which arise because of Lessee's breach of this Rider, (3) Lessee's violation of environment laws or regulations, or (4) Lessee's Release of Hazardous Substance onto the premises or into the surrounding environment. This obligation shall include, but shall not be limited to, environmental response and remedial costs, other cleanup costs, environmental consultants' fees, attorneys' fees, fines and penalties, laboratory testing fees, claims by third parties and governmental authorities for death, personal injuries, property damage, business disruption, lost profits, natural resource damages and any other costs for environmental assessments, monitoring, government compliance, or otherwise related to a Release or threatened Release of Hazardous Substances. This obligation by the Lessee shall survive the expiration or termination of this Lease Agreement and the sale of the property. If the Port so requests, Lessee shall accept the tender of defense of, and shall retain counsel of the Port's selection and at Lessee's expense to defend any third party claim asserted against the Port in connection with alleged conduct by Lessee which, if true, would be in breach of the provision of this Rider. Lessee shall have no obligation under this Paragraph 8, if Lessee can establish that the Release or threatened of Release of a Hazardous Substance and the damages resulting therefrom were caused solely by:

- a. An act of God;
- b. An act of war;
- c. An act or omission of a third party other than (i) an employee or agent of the Lessee, or (ii) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the Lessee, if the Lessee establishes by a preponderance of the evidence that Lessee (a) exercised due care with respect to the Hazardous Substance concerned, taking into consideration the characteristics of such Hazardous Substance, in light of all relevant facts and circumstances, and (b) took reasonable precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of such acts or omissions;
or
- d. Any combination of the foregoing paragraphs.

9. **NOTIFICATION TO THE PORT OF CHANGES IN OPERATION.** Lessee agrees to notify the Port in writing at least seven (7) days in advance of any previously undisclosed action which the Lessee plans to take which poses a material risk of a Release or threatened Release of Hazardous Substances into the environment, including but not limited to material changes in Lessee's methods of hazardous waste disposal, material increases in the volume of Lessee's hazardous waste

disposal, or material changes in the nature of any hazardous wastes which Lessee anticipates it will generate.

10. **COPIES OF ENVIRONMENTAL CORRESPONDENCE.** Lessee agrees to provide the Port with copies of all past and future correspondence to or from the Washington Department of Ecology, the U.S. Environmental Protection Agency, and any other government agency which has had or may have contact with Lessee regarding environmental concerns pertaining to the premises.
11. **NOTIFICATION OF SPILLS OR RELEASES.** Lessee shall comply with all notification requirements under the applicable federal, state and local environmental statutes and regulations, including but not limited to the timely notification of the appropriate government authorities of any spills or Releases of Hazardous Substances into the environment or onto the premises. Lessee shall notify the Port within 24 hours of discovery of any such spills or Releases, and shall provide copies of all correspondence and documents related to such spills or Releases to the Port with seven (7) days after receipt or creation, as the case may be.
12. **PORT'S REMEDY FOR BREACH OR VIOLATION.** In the event Lessee permits a Release of a Hazardous Substance to occur at or near the premises, or breaches any provision of this Rider, the Port shall be entitled (1) to terminate this Lease Agreement immediately, (2) to require Lessee to cease all operation which pose a risk or threat of releasing a Hazardous Substance into the environment, and (3) to require Lessee to begin an immediate cleanup of any and all contamination at the premises to the extent necessary to achieve full compliance with the applicable environmental laws and regulations. The Port shall be entitled to obtain immediate injunctive relief from a court of competent jurisdiction to enforce this provision. These remedies shall be in addition to, and not in substitution for, any other remedies available to the Port under applicable law.
13. **ANNUAL DECLARATION OF COMPLIANCE.** Within ten (10) days of receipt of a written request by the Port, Lessee shall provide to lessor a declaration of Lessee's compliance or non-compliance with the applicable environmental laws and regulations and with the provisions of this Rider, in the form set forth in Attachment No. 2. The Port anticipates that it will request such a declaration annually, approximately on the anniversary date of this Rider.
14. **INSPECTION OF PREMISES.** Lessee agrees to permit and cooperate with any on-site inspections and testing requested by the Port, including inspections and testing conducted by consultants or engineers hired by the Port to evaluate Lessee's compliance with the applicable environmental requirements and the provisions of this Rider. The Port shall provide Lessee within 24 hours advance notice of the Port's intent to conduct such inspection or testing.

15. DESIGNATED REPRESENTATIVE RESPONSIBLE FOR COMPLIANCE.

_____ whose work telephone number is _____ and whose home telephone number is _____ shall be the Lessee's designated representative who shall be primarily responsible (1) for Lessee's compliance with the provision of this Rider, (2) for handling contact with the Port pertaining to environmental compliance, and (3) for signing on behalf of Lessee the annual declaration of compliance pursuant to Paragraph 12 above. Lessee shall promptly notify the Port of any changes in the identity or telephone numbers of the designated representative.

16. ADDITIONAL PROVISIONS.

PORT OF PORT TOWNSEND:

LESSEE:

Larry Crockett

Scott Kimmel

Title: General Manager

Title: President

Date: _____

Date: _____

(Attachment No. 1 to Hazardous Substances Rider)

DISCLOSURE BY LESSEE

The Lessee makes the following disclosure pursuant to Paragraph 7 of the Hazardous Substances Warranty and Agreement (Attach Additional page(s) if necessary):

1. Release(s) of Hazardous Substances by Lessee:
(If none, initial here: _____)
2. Indication(s) of Contamination at Premises:
(If none, initial here: _____)
3. Lessee Violation(s) of Environmental Regulations:
(If none, initial here: _____)
4. Environmental Claims or Litigation Against Lessee:
(If none, initial here: _____)

Lessee: PORT TOWNSEND SHIPWRIGHTS, INC.

By: _____ / _____
(Printed Name) (Signature)

Title: _____ /Date: _____

(Attachment No. 2 to Hazardous Substances Rider)

DECLARATION OF COMPLIANCE

_____, as the designated representative of Lessee primarily responsible for environmental compliance pursuant to Paragraph 13 of the Hazardous Substances Warranty and Agreement dated: _____, hereby declares and represents as follows on behalf of Lessee:

1. I have read, and am familiar with, Lessee's obligations and representations as set forth in the Hazardous Substances Warranty and Agreement applicable to Lessee.
2. I am not aware of, and do not believe there have been any violations by Lessee of any of the provisions in the Hazardous Substances Warranty and Agreement, or of any requirements imposed on Lessee by federal, state or local environment laws and regulations.
3. I have no reason to believe, and do not believe, that any of the representations in Paragraph 7 of the Hazardous Substances Warranty and Agreement are inaccurate as of the date indicated below.
4. Lessee has not stored, used or had present on or adjacent to the premises any Hazardous Substances except those which have been disclosed in writing to lessor.
5. Lessee has not Released, disposed of, or permitted the Release of any Hazardous Substances onto the premises or into the environment surrounding the premises, except as has been disclosed in writing to Lessor.

Lessee: KIMMEL'S CRAB SHACK, LLC

By: _____
Signature

Title: _____ /Date: _____

RECORDED AT REQUEST OF
AND RETURN TO:
KIMMELS'S CRAB SHACK LLC
c/o Scott Kimmel
16921 Lemolo Shore Dr NE
Poulsbo WA 98370

QUIT CLAIM DEED

GRANTOR: PORT OF PORT TOWNSEND, a Washington municipal corporation

GRANTEE: KIMMEL'S CRAB SHACK LLC, a Washington limited liability corporation

ABBREV LEGAL: FOUR STRUCTURES TOGETHER COMPRISING APPROXIMATELY 12,061 S.F., LOCATED NEAR OR UPON THE "NEW DAY" SPIT W/IN HASTINGS 2ND ADDITION, CITY OF PORT TOWNSEND, JEFFERSON COUNTY, WA, ON A PORTION OF BLKS 24 & 25, LOTS 1-8 (TAX LOT 110), SPECIFICALLY EXCLUDING THE UNDERLYING REAL PROPERTY WHICH IS TO BE RETAINED BY GRANTOR

TAX PARCEL NO: 957602501 (Portion)

FOR AND IN CONSIDERATION OF ninety-thousand dollars and zero cents (\$90,000.00) and other good and valuable consideration, the receipt of which is hereby acknowledged by the Grantor, **Port of Port Townsend**, a Washington municipal corporation, **Grantor**, hereby conveys and quit claims to **Kimmel's Crab Shack LLC**, a Washington limited liability corporation, **Grantee**, and successors and assigns, the following described buildings and structures, which are real property, situated in the City of Port Townsend, County of Jefferson, State of Washington:

1. The structure commonly known as the "New Day Fisheries Building", a steel and concrete block building of approximately 10,200 square feet in size (60' wide by 170' long), located at 2427 Washington Street;

2. The “Westerly New Day Fisheries Buildings”, consisting of three adjoining buildings comprising approximately 1,861 square feet and situated on the spit south of the loading pier at 2427 Washington Street, including:
 - a. An approximately 1,240 square foot concrete block structure with a composition roof and concrete floor;
 - b. An approximately 465 square foot attached freezer unit presently used for storage; and
 - c. An approximately 156 square foot wood framed/partially enclosed weight room.

See Exhibit 1 - Map (depicting the location of the structures described above).

This deed is on and subject to the following terms:

- A. Underlying real property is retained by Grantor, with only the Grantor’s interest in the above-described structures conveyed to Grantee.
- B. Existing recorded covenants and encumbrances (including restrictions).
- C. Continued free Port and public access to the loading pier and spit (with cellular tower).
- D. The buildings and structures are conveyed **AS IS, WHERE IS, AND WITH ALL FAULTS**. There are **NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES OF ANY KIND**, and all representations, warranties, or guarantees of any and every kind are expressly disclaimed, including but not limited to any regarding condition or fitness for any particular purpose. Grantee has had an opportunity to make and has made as much of an inspection of the buildings and structures as desired, and is not relying on any representations, warranties, or guarantees of Grantor or its employees, agents, representatives, successors or assigns. Disclosures under RCW 64.06 are waived and not required because the manager and sole member of Grantee was a _____ of the entity that had a leasehold interest in the buildings and structures and surrounding property within two years of the date of this transfer. Grantor has no obligation to repair, improve, or replace any of the buildings or structures prior to or in connection with this conveyance or at any time in the future. Grantee, on behalf of its managers, members, officers, directors, and successors and assigns, assumes the risk and liability of, and waives, releases, and agrees to defend (with attorneys reasonably satisfactory to Grantor), indemnify, and hold harmless Grantor and its commissioners, directors, officers, employees, agents, representatives, insurers, and the successors and assigns of each of the foregoing, from and against all claims, demands, actions, causes of action, suits, obligations, damages, liabilities, and judgments of any kind, nature, or amount whatsoever, past, present, or future, including but not limited to claims for damages,

losses, injuries to or death of any person or damage to or loss of any property, or monies due, and whether in tort, contract, *quantum meruit*, or otherwise, whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, incidental damages, punitive and exemplary damages, environmental damages (including but not limited to investigation and remediation costs, natural resource damages, and reasonable attorney fees), penalties, interest, costs, expenses (including reasonable attorneys' fees), and fees, which may arise out of, or result from, or involve, or be in any way connected with or related to or contributed to by, the buildings or structures, and the provisions of any local, state, federal, or foreign law or statute providing in substance that releases shall not extend to claims, demands, injuries, or damages which are unknown or unsuspected to exist at the time, by persons executing such release, are hereby expressly, knowingly, and knowledgeably released and waived.

- E. The above provisions shall survive the closing and this transfer, are covenants, conditions, and restrictions that touch and concern the real property both benefited and burdened, are covenants real, shall be covenants running with the real property, shall be binding on all successors in interest to Grantor and Grantee, and shall be stated in all subsequent deeds to or other transfers of the real property described herein.

SIGNATURES ARE ON FOLLOWING PAGES

PORT OF PORT TOWNSEND

MEETING OF: May 25, 2016

AGENDA ITEM: VIII. Other Business
A. Changes to the Liveboard Rules and Regulations

BACKGROUND:

At the winter Washington Public Ports Association conference, several staff members and commissioners attended the Marina Committee seminar. The Port of Anacortes presented their rules and regulations regarding liveboards. There were a number of ideas that we think we can incorporate which would make our rules and regulations function better. One of the primary changes is the requirement for a background check for all new liveboard applicants. Staff will develop our own application form and start conducting background checks as of June 1, 2016. Current liveboard tenants will be grandfathered and this change will only apply to new applicants.

An additional change will be that no new liveboard tenants will be allowed on the outside of the linear dock at the Boat Haven Marina. Liveboards must be able to maneuver their vessel to use the pump out stations and that is just not possible with the limited access on the linear dock.

The Director's Delegation of Authority allows for the implementation of this type of change as long as the commission is notified in a timely manner.

Executive Director's Recommendation:

For information only.

PORT OF PORT TOWNSEND

MEETING OF: May 25, 2016

**AGENDA ITEM: VIII. Other Business
B. Personnel Policy Manual**

The Personnel Policy Manual, last updated July 2013, has been reviewed and updated with pertinent regulations that have changed in the past three years, as well as best practice policies, some employee recognition and development policies and some general clarification wording. The manual has been reviewed by the human resources division of Enduris, the Port's insurance company, as well as all staff and executive management. The Executive Director has approved it.

Executive Director's Recommendation:

For information and presentation to the Commission.