

CITY COUNCIL CALENDAR

Thursday, September 12, 2019

NOTE:

***THE MEETING IS HELD AT 7 P.M. CITY COUNCIL CHAMBERS - ROOM 214, CITY HALL,
133 WILLIAM STREET, NEW BEDFORD, MA. FOR OFFICIAL POSTING, PLEASE SEE
CITY'S WEBSITE***

OPENING OF SESSION BY:

LINDA M. MORAD, CITY COUNCIL PRESIDENT

PRAYER LED BY:

REVEREND RAMIRO MONTEIRO, INTERNATIONAL CHURCH OF THE NAZARENE

PLEDGE OF ALLEGIANCE

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HEARINGS

1. HEARING, NSTAR Electric Company d/b/a Eversource Energy for location of one (1) 45"x45x36" Handhole in BROCK AVENUE, between Harmony & Ruth Streets.

1a. AN ORDER,

2. HEARING, NSTAR Electric Company d/b/a Eversource Energy for location of eight (8) 5" Conduits in BOLTON STREET, South of Jenkins Street.

2a. AN ORDER,

MAYOR'S PAPERS

M1. COMMUNICATION, Mayor Mitchell, to City Council, submitting a copy of a Host Community Agreement with Southcoast Apothecary, LLC; the company is currently seeking a license from the Marijuana Cannabis Control Commission to operate a recreational marijuana dispensary at 115 Coggeshall Street, under the agreement substantial benefits will be provided to the City and to the residents of New Bedford.

M1a. HOST COMMUNITY AGREEMENT, Southcoast Apothecary LLC to operate a recreational marijuana dispensary at 115 Coggeshall Street, New Bedford, MA 02746.

M2. COMMUNICATION, Mayor Mitchell, to City Council, submitting a

copy of a Host Community Agreement with Tree Beard, Inc.; the company is currently seeking a license from the Marijuana Cannabis Control Commission to operate a recreational marijuana dispensary at 1 Nauset Street, under the agreement substantial benefits will be provided to the City and to the residents of New Bedford.

M2a. HOST COMMUNITY AGREEMENT, Tree Beard, Inc. to operate a recreational marijuana dispensary at 1 Nauset Street, New Bedford, MA 02746.

M3. COMMUNICATION, Mayor Mitchell, to City Council, submitting a copy of a Host Community Agreement with Metro Harvest, Inc.; the company is currently seeking a license from the Marijuana Cannabis Control Commission to operate a recreational marijuana dispensary at 606 Tarkiln Hill Road, under the agreement substantial benefits will be provided to the City and to the residents of New Bedford.

M3a. HOST COMMUNITY AGREEMENT, Metro Harvest, Inc., to operate a recreational marijuana dispensary at 606 Tarkiln Hill Road, New Bedford, MA 02745.

M4. COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDER, authorizing the Mayor to execute on behalf of the City a Lease with a two (2) year term with four (4) additional two (2) year options between the City of New Bedford acting through its Airport Commission and the Airport Grille LLC.

M4a. AN ORDER,

M5. COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDER for the APPROPRIATION of \$2,535,000.00, from ORDINARY REVENUE and MUNICIPAL RECEIPTS to the SCHOOL DEPARTMENT.

M5a. AN ORDER,

M6. COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDER for the APPROPRIATION of \$170,000.00, from ORDINARY REVENUE and MUNICIPAL RECEIPTS to MIS SALARIES AND WAGES in the amount of \$10,000.00 AND MIS CHARGES AND SERVICES in the amount of \$160,000.00.

M6a. AN ORDER,

M7. COMMUNICATION, Mayor Mitchell, to City Council, submitting a ONE-YEAR Waiver of Residency for SCOT SERVIS, Airport Manager for the New Bedford Regional Airport, who currently resides in Lakeville, MA.

M8. COMMUNICATION, Mayor Mitchell, to City Council, submitting a ONE-YEAR Waiver of Residency for SHAWN SYDE, as a City Engineer, Department of Public Infrastructure, who currently resides in Fall River, MA.

M9. COMMUNICATION, Mayor Mitchell, to City Council, submitting a ONE-YEAR Waiver of Residency for THOMAS J. MATHIEU, Associate City Solicitor, with the Office of the City Solicitor, who currently resides in Raynham, MA.

M10. COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of DEBRA TRAHAN, New Bedford, MA 02745 to the ZONING BOARD OF APPEALS as an Alternate Member; this this term will

expire December 2023.

M11. COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of WILLIAM ANDREWS, New Bedford, MA to the VETERAN'S ADVISORY BOARD; Mr. Andrews will be replacing Oliver E. Moreau, Sr., whose term has expired; this term will expire December 2019.

NEW BUSINESS

3. REPORT, Committee on Appointments & Briefings, recommending to the City Council APPROVAL of the APPOINTMENT of ELIZABETH C. MCNAMARA, New Bedford, MA to the VETERANS ADVISORY BOARD; Ms. McNamara will be replacing Nelson Ostiguy whose term has expired; this term will expire December 2020.

3a. COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of ELIZABETH C. MCNAMARA, New Bedford, MA to the VETERANS ADVISORY BOARD; Ms. McNamara will be replacing Nelson Ostiguy whose term has expired; this term will expire December 2020. (Referred to the Committee on Appointments and Briefings – July 18, 2019.)

4. REPORT, Committee on Appointments & Briefings, recommending to the City Council APPROVAL of the APPLICATION, Christopher Zammito, D/B/A RPCV Autobody, LLC, for a SPECIAL PERMIT for Motor Vehicles Sales and Rentals, Body Repair, General Repair and Light Service at 49 Potomska Street, New Bedford, MA 02740.

4a. SPECIAL PERMIT, CHRISTOPHER ZAMMITO, d/b/a RPCV AUTOBODY, LLC, for a SPECIAL PERMIT for Motor Vehicles Sales and Rentals, Body Repair, General Repair and Light Service at 49 Potomska Street, New Bedford, MA 02740.

5. REPORT, Committee on Appointments & Briefings, recommending to the City Council to take **“NO FURTHER ACTION”** on the Written Motion, Councillors Coelho and Giesta, requesting, that a representative from the New Bedford Public Schools meet with the Committee on Appointments and Briefings to discuss ideas on how to increase the amount of Crossing Guards at the public schools.

5a. WRITTEN MOTION, Councillors Coelho and Giesta, requesting, that a representative from the New Bedford Public Schools meet with the Committee on Appointments and Briefings to discuss ideas on how to increase the amount of Crossing Guards at the public schools. (Referred to the Committee on Appointments and Briefings – March 28, 2019.)

6. AN ORDINANCE, amending Chapter 19, Section 19-7 (c) by inserting the title of Assistant Superintendent of Highways & Utilities M-12 and the title of Executive Finance and Operations Specialist M13. (Passed to a Second Reading - August 15, 2019.)

7. WRITTEN MOTION, Councillor Lopes, requesting, that the Committee on Ordinances review the establishment and membership of the New Bedford Redevelopment Authority. (To be Referred to the Committee on Ordinances.)

8. WRITTEN MOTION, Councillor Lopes, requesting, that that a representative from the Department of Public Infrastructure meet with the

Committee on Appointments and Briefings to discuss the street closures associated with the Rt. 18 Phase II project.

9. WRITTEN MOTION, Councillor Lopes, requesting that the Committee on Ordinances, amend the Code of Ordinances, Chapter 9, Section 4130B, by deleting the words “Marijuana Establishment” from Section 4131B (ii) (a). (To be Referred to the Committee on Ordinances.)

10. WRITTEN MOTION, Councillor Gomes, requesting that the Administration and the MIS Department release more information on the cyber-attack that happened on the City’s computer system, and if Residents and/or employees sensitive information was compromised and how will the City continue to address this issue now and in the future especially if personal information has been stolen; and further prior to the attack what computer safety measures should have been in place to prevent such a breach and if this attack was the first or have there been others. (To be Referred to the Committees on Internal Affairs and Public Safety and Neighborhoods.)

11. COMMUNICATION/DEMOLITION, Anne Louro, Preservation Planner, to City Council, re: BUILDING DEMOLITION REVIEW of 697 ASHLEY BOULEVARD, (MAP 114/LOT 320), a Circa 1932 one-story concrete block, former gas/auto repair station, advising that “the structure is not located in a National Register Historic District; the structure is of no notable historic significance either recorded or found with the existing condition of the structure, in light of these findings, the Preservation Planner has determined that the residential structure at 697 Ashley Boulevard is neither a Historically Significant nor a Preferably Preserved Structure.”

12. COMMUNICATION/DEMOLITION, Anne Louro, Preservation Planner, to City Council, re: BUILDING DEMOLITION REVIEW of 494 WOOD STREET, (MAP 114/LOT 131), a Circa 1930 one-story concrete block, commercial garage type structure, advising that “the structure is not located in a National Register Historic District; the structure is of no notable historic significance either recorded or found with the existing condition of the structure, in light of these findings, the Preservation Planner has determined that the residential structure at 494 Wood Street is neither a Historically Significant nor a Preferably Preserved Structure.”

13. COMMUNICATION, Council President Morad, submitting a copy of a Host Community Agreement, from Nicholas A. Gomes, Chief Legal Counsel, Tree Beard, Inc., for a proposed Recreational Marijuana Establishment at 1 Nauset Street, New Bedford, also enclosed is a zoning conformance letter from the Department of Inspectional Services and a letter from Tabitha Harkin, City Planner stating the HCA Screening Committee’s favorable recommendation to negotiate a Host Agreement. (Copy all Councillors 08/27/2019.) (To be Referred to the Special Committee on Cannabis Regulation and Host Community Agreements Review.)

14. COMMUNICATION, Foth-CLE Engineering Group submitting a copy of an Environmental Notification Form, dated August 30, 2019, on behalf of Cooke Island LLC for a proposal to license and maintain existing fill and building, pile anchored barges, a reconfiguration zone and a gangway supported by a concrete pad at 23 Pope’s Island, New Bedford, MA. (To be Received and

Placed on File.)

TABLED BUSINESS

01/10/20 WRITTEN MOTION, Councillor Gomes, requesting that the City Council forward a letter of request to the Commonwealth of Massachusetts' Cannabis Commission as to whether the City is following State Law regarding marijuana establishments in the City; and further, enclosed in the letter, please include a copy of the 11-page "Screening Form/Application for a Marijuana Establishment Host Community Agreement", and a copy of the City's zoning map that has been put forth by the Mayor's Review Committee, comprised of the City Solicitor, the City Planner, the Chief of Police, the Chief Financial Officer, the Director of Inspectional Services, the Director of Planning, Housing and Community Development and the City's Health Director; asking that the Cannabis Control Commission review the application and the zoning map and report back to the City Council as to whether this Application process and zoning map applies to the laws of the Commonwealth of Massachusetts' Cannabis Control Commission; and further, that Steven Hoffman, Chairman of the Massachusetts Cannabis Control Commission or a representative, meet with the Special Committee on Licensing and Zoning for Cannabis to discuss whether the City has followed Massachusetts Laws and policies regarding marijuana establishments in the City of New Bedford.

***In accordance with the Americans with Disabilities Act (ADA),
if any accommodations are needed, please contact the City Council Office at
508-979-1455. Requests should be made as soon as possible but at least 48
hours prior to the scheduled meeting.***



Item Title:

THE MEETING IS HELD AT 7 P.M. CITY COUNCIL CHAMBERS - ROOM 214, CITY HALL, 133 WILLIAM STREET, NEW BEDFORD, MA. FOR OFFICIAL POSTING, PLEASE SEE CITY'S WEBSITE

Item Detail:

Additional Information:



Item Title:

LINDA M. MORAD, CITY COUNCIL PRESIDENT

Item Detail:

Additional Information:



Item Title:

REVEREND RAMIRO MONTEIRO, INTERNATIONAL CHURCH OF THE NAZARENE

Item Detail:

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HEARING - BROCK AVENUE, BETWEEN HARMONY & RUTH STREETS

Item Detail:

1. HEARING, NSTAR Electric Company d/b/a Eversource Energy for location of one (1) 45"x45x36" Handhole in BROCK AVENUE, between Harmony & Ruth Streets.

1a. AN ORDER,

Additional Information:



Item Title:

HEARING - BOLTON STREET, SOUTH OF JENKINS STREET

Item Detail:

2. HEARING, NSTAR Electric Company d/b/a Eversource Energy for location of eight (8) 5" Conduits in BOLTON STREET, South of Jenkins Street.

2a. AN ORDER,

Additional Information:



Item Title:

HOST COMMUNITY AGREEMENT - SOUTHCOAST APOTHECARY LLC, 115 COGGESHALL STREET

Item Detail:

M1. COMMUNICATION, Mayor Mitchell, to City Council, submitting a copy of a Host Community Agreement with Southcoast Apothecary, LLC; the company is currently seeking a license from the Marijuana Cannabis Control Commission to operate a recreational marijuana dispensary at 115 Coggeshall Street, under the agreement substantial benefits will be provided to the City and to the residents of New Bedford.

M1a. HOST COMMUNITY AGREEMENT, Southcoast Apothecary LLC to operate a recreational marijuana dispensary at 115 Coggeshall Street, New Bedford, MA 02746.

Additional Information:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Communication-Host Agreement-Southcoast Apothecary, LLC	Cover Memo



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

September 5, 2019

City Council President Morad and
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the Council:

I write to inform the City Council that my Administration has negotiated a Host Community Agreement with Southcoast Apothecary, LLC.

The company is currently seeking a license from the Massachusetts Cannabis Control Commission to operate a recreational marijuana dispensary at 115 Coggeshall Street. Under the Agreement substantial benefits will be provided to the City and to the residents of New Bedford. These are summarized below:

Payments

An initial payment of \$25,000 upon opening of the facility and a total payment of 3% of gross retail sales revenue per year of operation.

Annual charitable contributions of \$50,000 or 1½% of gross retail sales, whichever is greater, to New Bedford-based organizations that deliver substance abuse prevention and education programs in the City's public-school district.

In any year in which gross sales reach \$2,500,000, an additional charitable contribution of \$50,000 is made. Should gross sales reach \$5,000,000, the additional charitable contribution is \$100,000.

Safety

The company must coordinate with the New Bedford Police Department on security planning, security camera installation, and other safety measures. The company must meet with police on a regular basis for a review of operations.

Employment

The company must, to the extent legally permissible, give priority to qualified residents of the City for employment at the facility. Applicants must do their best to comply with the *New Bedford Works* policy.

Taxes

The company will pay all real estate and personal property taxes on the facility.

Signage

Ground mounted, pylon, internally lit and/or flashing and off-premises signs are not allowed. Wall signs are limited in size to be smaller. The size and color of all signs shall be in scale and compatible with the surrounding buildings and street.

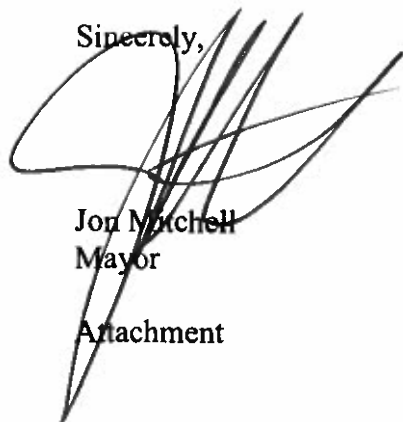
While a Host Community Agreement is an important milestone towards the operation of a recreational marijuana dispensary in the City, it is important to also note that many steps remain before such a facility opens.

Applicants must complete the Cannabis Control Commission application process and receive a provisional license. Once in possession of a provisional license, applicants must all obtain the required City approvals for their facilities. In this instance, approvals will include a Special Permit from the Planning Board, compliance with Board of Health regulations, and a license from the City Licensing Board.

In sum, for the proposed facility to become a reality in New Bedford several outstanding issues remain in need of attention. That said, I have undertaken all the actions available to me as Mayor under Massachusetts law to advance the proposal while ensuring that the City's interests are served.

I ask for the City Council's support for the attached Agreement so that together we can secure these benefits for New Bedford residents and businesses. Thank you for your consideration on this important matter.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Jon Mitchell', is written over the printed name and title.

Jon Mitchell
Mayor

Attachment

CITY OF NEW BEDFORD

SOUTHCOAST APOTHECARY, LLC HOST COMMUNITY AGREEMENT FOR THE SITING OF A RECREATIONAL MARIJUANA RETAILER IN THE CITY OF NEW BEDFORD

This Host Community Agreement (the “**Agreement**”) is entered into this 4th day of September, 2019 (the “**Effective Date**”) by and between the City of New Bedford, a Massachusetts municipal corporation acting by and through its Mayor, with a business address of 133 William Street, New Bedford, MA 02740 (the “**City**”) and Southcoast Apothecary, LLC, a Massachusetts limited liability company with a business address of 170 Hadley Street, New Bedford, MA 02745 (the “**Company**”) (City and Company each a “**Party**” and collectively the “**Parties**”).

RECITALS

WHEREAS, the Company desires to locate a Recreational Marijuana Retailer (“**RMR**”) at 115 Coggeshall Street, New Bedford, MA 02746 (the “**Property**” and together with the proposed RMR the “**Facility**”), for the retail sale of recreational marijuana in accordance with the laws of the Commonwealth of Massachusetts (“**MA Law**”) and those of the City (“**Local Law**”);

WHEREAS, the Company desires to provide community impact fee payments to the City pursuant to M.G.L. c. 94G, § 3(d), that shall be reasonably related to the costs imposed upon the City by Company’s operations in the City;

WHEREAS, the Company desires to provide additional payments directly to the community at large to aid in education and treatment programs; and

WHEREAS, the City supports the Company’s intention to operate an RMR at the Facility for the retail sale of recreational marijuana.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual promises set forth below, the parties agree as follows:

AGREEMENT

1. Host Community Payments. If the Company obtains a final license, or its equivalent, for the operation of the Facility from the Cannabis Control Commission (“**CCC**”), and receives all necessary approvals from the City to operate the Facility, then the Company agrees to the following:

- a) Pursuant to M.G.L. ch. 94G, § 3(d), and as the same may be amended from time to time, the Company shall pay a fee to the City equal to, but not greater than, Three Percent (3%) of its annual Gross Sales (as defined herein) (the “**RMR Payment**”). The RMR Payment shall be made in two installments as follows: (a) Annually seven (7) months after the anniversary of the Sales Commencement Date (as defined herein) in an amount equal to

Three Percent (3%) of the Company's Gross Sales through the prior six (6) months of operations, and (b) annually within thirty (30) days of the anniversary of the Sales Commencement Date in an amount equal to Three Percent (3%) of the Company's Gross Sales through the prior six (6) months of operations.

b) Notwithstanding anything herein to the contrary, the Company shall make a one-time payment to the City in the sum of Twenty-five Thousand and 00/100 Dollars (\$25,000.00) upon the Sales Commencement Date (the "**Initial Payment**"), which amount shall be deducted from the first annual RMR Payment described above. If and to the extent that the first RMR Payment due to the City is for an amount less than Twenty-five Thousand and 00/100 Dollars (\$25,000.00), the second RMR Payment due to the City shall be reduced by an amount equal to the difference of Twenty-five Thousand Dollars and 00/100 (\$25,000.00) less the amount due under the first RMR Payment.

c) For the purposes of this Agreement, the term "**Sales Commencement Date**" shall mean the date in which the Company sells Marijuana or Marijuana-infused Product (each as defined in 935 CMR 500.002) to a natural person who is twenty-one (21) years of age or older (a "**Consumer**").

d) For purposes of this Agreement, the term "**Gross Sales**" shall mean the total of all sales of Marijuana or Marijuana-infused Products. Gross Sales shall not include: (a) the amounts of all refunds, credits, allowance and adjustments made to customers; and (b) the amounts of state or local sales tax or similar tax imposed by any governmental authority.

e) The Company shall provide written notice to the City at least thirty (30) days in advance of the anticipated opening date of the Facility, and thereafter shall, within seven (7) days of the Sales Commencement Date, provide written notice to the City setting forth the official Sales Commencement Date.

f) In the event that the Company enters into an HCA with another City in the Commonwealth of Massachusetts that contains financial terms more favorable than the financial term contained in this Agreement, then the Parties agree that this Agreement shall be amended so as to result in its financial terms being equally favorable to the City as those contained in the other City's HCA. The Company represents and warrants to the City that it is not presently under an HCA with another Massachusetts City providing more favorable financial terms.

2. **Term and Termination.** The Term of this Agreement shall be five (5) years from the Effective Date (the "**Term**"). In the event the Company loses or has its license(s), approvals, and/or permits to operate in the City revoked by the CCC or the City, this Agreement shall become null and void and any outstanding RMR Payments shall become due and payable within thirty (30) days of the termination of this Agreement. Prior to the end of the Term, the Parties shall negotiate, in good faith, a successor agreement, including an extension of the Payments called for herein.

3. **Payments.** The Company shall make the payments to the City as set forth in Section 1 of this Agreement.

4. **Failure to Remit Payments.** The Parties acknowledge the Payments are expressly included as "other municipal charges" pursuant to G.L. c. 40, § 57. A City of New Bedford licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of the Company or agent thereof if the Company's fails to timely pay any RMR Payments.

5. **Acknowledgements.** The City understands and acknowledges that payments due pursuant to this Agreement are contingent upon the Company's receipt of all state and local approvals required to operate the Facility.

6. **Review.** If under applicable Massachusetts law the terms relating to payment under this Agreement are determined to any extent to be illegal, otherwise invalid, or incapable of being enforced, which unenforceability would materially and adversely affect the economic substance of the transactions contemplated by this Agreement, the City and the Company shall negotiate, in good faith, amendments to this Agreement so as to result in neutral economic impact to the City to the extent permissible by law.

7. **Local Taxes.** At all times during the Term of this Agreement, real estate and personal property taxes owed by the Company shall be due and payable.

8. **Other Payments.** The Company shall pay any and all fees associated with its annual purchases of utility services from all local government agencies.

The Company shall reimburse the City for any and all reasonable and customary consulting costs and fees related to any land use applications concerning the Facility, negotiation of this Agreement, and review concerning the Facility, including planning, engineering, and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Facility. In no event shall the Company be responsible for reimbursing the City for costs associated with the operating of the City's offices in their regular and customary course, including, but not limited to wages for City employees.

The Company shall reimburse the City for the actual costs incurred by the City in connection with holding public meetings not held in public buildings and forums not within the City's regularly scheduled public hearings and meetings, which are solely devoted to discussing the Facility. Such costs shall be limited to advertising costs and consultant attendance at the aforementioned meetings.

The Company acknowledges that time is of the essence with respect to their timely payments of all funds required by this Agreement. If any such payments are not fully made within ten (10) business days of the date written demand has been actually received by the Company, the Company shall be required to pay the City a late payment penalty equal to five percent (5%) of that payment in addition to the required payment.

9. Annual Charitable/Non-Profit Contributions. The Company, in addition to any funds otherwise specified herein, agrees to make an annual contribution of \$50,000.00 or 1½ % of the establishment's gross sales, whichever is greater, in charitable donations per year to New Bedford based organizations that deliver substance abuse prevention and education programs in the City's public-school district. The first \$25,000.00 portion of the payment for the first year of operation shall be paid on the facility's opening date and the remaining balance must be made within 12 months of opening. Company shall submit annual reports to the City indicating payments made under this provision. In any year where the Company reaches gross sales of \$2,500,000.00, the Company shall make an additional charitable contribution of \$50,000.00 and in a year where the Company reaches \$5,000,000.00 in gross sales, the Company shall make an additional charitable contribution of \$100,000.00. Any charitable payment will not reduce the Community Impact Fee amount nor is it considered a payment in response to a community impact.

10. Accounting and Review. The Company shall keep and maintain financial records in accordance with generally accepted accounting principles. Such records shall be available for inspection by the City, upon request, and shall include, but not be limited to, all financial records required in any section of 935 CMR 500.000, and business records, in accordance with 935 CMR 500.105(e), which shall include manual or computerized records of: (1) Assets and liabilities; (2) Monetary transactions; (3) Books of accounts, which shall include journals, ledgers, and supporting documents, agreements, checks, invoices, and vouchers; (4) Sales records including the quantity, form, and cost of marijuana products; and (5) Salary and wages paid to each employee, stipend paid to each board member, and any executive compensation, bonus, benefit, or item of value paid to any individual affiliated with a Marijuana Establishment, including members of the nonprofit corporation, if any (together these shall be referred to as the **"Financial Records"**).

Following the closure of the Facility, the Company shall keep all records for at least two (2) years at the Company's expense and in a form and location acceptable to the CCC.

So long as this Agreement is in effect and for a period of two (2) years thereafter, the City shall have the right to examine and audit the Company's Financial Records. Examinations may be made upon not less than thirty (30) days prior written notice from the City and shall occur only during normal business hours at such place where said books and financial records are maintained. The City's examination or audit, as aforesaid, shall be conducted in such manner as to not interfere with Company's normal business activities.

In the event that the Parties disagree as to the accuracy of the certification of the Company's annual sales, the City may conduct an audit of such sales at the expense of the Company. If, after such audit and re-computation, an additional fee or payment is owed to the City, a penalty of ten percent (10%) or five thousand dollars (\$5,000), whichever is greater, not to exceed \$10,000, will be added to the amount due.

11. Community Support and Additional Obligations.

a. Local Vendors – to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to qualified local businesses and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility.

b. Employment: except for senior management, and to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to hire qualified residents of the City as employees of the Facility. Company shall use its best efforts to comply with the New Bedford Works policy, the terms of which are incorporated herein.

c. The Company shall, at least annually, provide the City with copies of all reports submitted to the CCC regarding the Company's operations in the City.

d. The Company will work cooperatively with all necessary municipal departments, boards, commissions, and agencies to ensure that the Company's operations are compliant with the City's codes, rules, and regulations.

e. The Company will comply with the City's non-discrimination ordinance in hiring, transacting business and entering into contracts and to the extent allowed by law, the Company will seek to hire employees and engage in contracts with a preference for diversity and supporting minority and women-owned businesses.

f. The Facility shall be designed, constructed, renovated, or improved to reflect high quality construction standards and seek to improve the general design aesthetic of the neighborhood. The facility shall, at a minimum, reflect the following:

i. Facade Variation: For all development and redevelopment involving new construction, the massing, façades, and roof configuration of a building shall be varied via constructed or two-dimensional means. If a building façade is more than 50 feet in length, it shall include a minimum of 10 feet of variation in the building footprint (set-back or projection in the building wall) for every 50 feet of façade length, and related changes in the roofline in order to reduce the apparent mass of the building.

ii. Building Materials: Use high quality, traditional materials that weather naturally on the exterior of the building to reflect regional building traditions. Alternatively, incorporate low-reflective, neutral, and earth tones to retain the subtle character of the region's traditional materials. In areas not visible from regional roadways or distinctive community districts, use of nontraditional materials, forms, and site designs may be appropriate. In such areas, maintenance of adequate landscape buffers on the subject

property shall be required to ensure that the proposed development is screened from view. Metal and vinyl siding are prohibited.

iii. Historic Buildings: For all projects located in historic buildings, design guidelines of the Bedford Landing 40C district shall apply.

iv. Temporary Signage: The only temporary signage allowed shall be banner signage bearing the company logo, no greater than 25 SF, at a designated adults-only City permitted special event and may only remain up for no longer than two days.

v. On-Site Signage: Ground mounted, pylon, internally lit and/or flashing signs shall not be permitted. Wall signs shall be limited in size to be read at a pedestrian scale. The size and color of all signs shall be in scale and compatible with the surrounding buildings and street. When more than one sign is used, the graphics shall be coordinated to present a unified image. All signage shall, at a minimum, be subject to requirements of New Bedford Code of Ordinances S. 3200 and Cannabis Control Commission. In the event of any conflict between said requirements and this Agreement, the more restrictive requirement shall prevail. Logos shall be tasteful and ambiguous in nature. All proposed signage (Wall, ground, blade, or otherwise) is subject to administrative approval by the Planning department.

vi. Off-Premises Signage: The Company agrees that neither it nor its agents will erect, place or otherwise establish any off-premises sign, other than the temporary signage permitted herein.

vii. Lighting: Site lighting and window displays shall be tasteful and conform with dark sky guidelines. No up lights, flashing or colored LED lights allowed on the premises. A photometric lighting plan is required under site plan review and shall not be waived.

viii. Site Landscaping: Use substantial landscape buffers to screen new development. Loading areas should be sited outside primary visual corridors or shielded from view by separate structures, projecting building wings, or distinctive landscaping and fencing. Outdoor storage of any kind is prohibited.

ix. Parking: Ample parking shall be provided via an engineered site plan filed under Site Plan Review. Parking plan must be peer reviewed for traffic implications via an engineered traffic study at the Special Permit approval stage. A transportation management plan will also be required for all Companies which addresses anticipated peak traffic during grand opening and holidays.

x. To the fullest extent practicable, the facility's power supply shall use renewable power sources.

12. Community Health Impact Assessment. Prior to the Sales Commencement Date, the Company must conduct a Health Impact Assessment (HIA) for the neighborhood of their

proposed location. The HIA must be conducted by a firm approved by the City Health Department and undertaken in cooperation with the Board of Health. The HIA may utilize the most recent Community Health Needs Assessment (CHNA) prepared by Southcoast Hospitals Group as a baseline but every effort shall be made to make the assessment as site specific as possible with no greater a radius than one mile of the site. The HIA must include at least two community meetings regarding the proposed operation with notice to the neighborhood and conducted in a City location as close as possible to the proposed site. The Company must make every effort to incorporate the recommendations of the Board of Health in the operations plan for the Facility.

13. Support. The City agrees to submit to the CCC all documentation and information required by the CCC from the City for the Company to obtain approval to operate. The City agrees to support Company's application(s) with the CCC but makes no representation or promise that it will act on any other license or permit request in any way other than by the City's normal and regular course of conduct and in accordance with their codes, rules, and regulations and any statutory guidelines governing them.

14. Local Authority. This Agreement does not waive, limit, control, govern or in any way describe the legal authority of any municipal board, commission, committee, officer or official to regulate, authorize, restrict, inspect, investigate, enforce against, or issue, deny, suspend or revoke any permit, license or other approval with respect to the Company or the premises on which the Company will operate; nor does it waive, limit, control, govern or in any way describe the legal authority of the New Bedford Police Department to investigate, prevent or take action against any criminal activity with respect to the Company or, the premises on which the Company will operate.

15. On-site Consumption. The Company agrees that, even if permitted by statute or regulation, it will prohibit on-site consumption of marijuana and marijuana-infused products at the Facility.

16. Security. The Company shall maintain security at the Facility in accordance with a security plan approved by the CCC and the City. In addition, the Company shall comply with MA Law and Local Law regarding security of the Facility. At a minimum, the Company shall:

- i. Provide a security plan to be reviewed and approved by the Chief of Police initially and anytime there is a substantive change thereto.
- ii. Engage in periodic meetings with the Police Department to review operational concerns or other issues.
- iii. Promptly report the discovery of the following to City police within twenty-four (24) hours: diversion of marijuana; unusual discrepancies identified during inventory, theft, loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport; any suspicious act involving the sale, distribution, and delivery of

marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and any other breach of security

iv. Site interior and exterior security cameras in coordination with the Police Department, subject to final approval by the CCC, and provide access to all security camera feeds to the Police Department.

iv. Comply with all the CCC's requirements regarding Criminal Offender Record Information (CORI) review for any new manager hired and the Police Chief shall review, within thirty days of receiving said CORI report, and provide recommendations as to whether the individual is suitable to hold the position.

v. Refuse to complete a transaction to any customer if the customer reasonably believes to be under the influence of drugs or alcohol.

vi. Verify the legal age of all customer using a government-issued identification prior to the customer being admitted into the facility and again prior to the completion of a transaction. Company must utilize electronic identification verification measures when possible.

17. Governing Law. This Agreement shall be governed and construed and enforced in accordance with the currently applicable laws of the Commonwealth of Massachusetts, without regard to the principals of conflicts of law thereof. The Parties expressly waive any defense to enforcement of this Agreement based upon nonconformance with federal law regarding the illegality of marijuana.

18. Amendments/Waiver. Amendments or waivers of any term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all Parties prior to the effective date of the amendment.

19. Severability. The Company agrees not to contest any term or condition of this Agreement, however, if any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby with the exception of any term or condition regarding payment; provided that in the event any term or condition regarding payment of fees or annual charitable contributions shall be held invalid, illegal or unenforceable by a court of competent jurisdiction or the Cannabis Control Commission, said payment, fees or charitable contribution shall be made a part of the Company's Positive Impact Plan undertaken and submitted in connection with its license from the Cannabis Control Commission. To the extent the validity of this Agreement is challenged by the Company in a court of competent jurisdiction, and the

validity of this Agreement is upheld, the Company shall be required to pay for any fees and costs incurred by the City in enforcing this Agreement.

20. Successors/Assigns. This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. The City shall not assign or transfer any interest or obligations in this Agreement without the prior written consent of the Company, which shall not be unreasonably delayed, conditioned, or withheld. The Company shall not assign or transfer any interest or obligation in this Agreement without the prior written consent of the City, which shall not be unreasonably delayed, conditioned, or withheld; provided however, such consent shall not be required in the event such transfer or assignment is between the Operator and another entity which is authorized by the CCC or other authorizing entity to operate the Facility, or if such assignment or transfer is the result of: (i) an affiliate entity of the Company; or (ii) an entity which controls, is controlled by, or is under the common control of the Company; or (iii) to an entity into or with which Company may be merged or consolidated or by which it is acquired.

21. Entire Agreement. This Agreement constitutes the entire integrated agreement between the Parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the Parties hereto. This Agreement may be signed in multiple counterparts.

22. Notices. Except as otherwise provided herein, any notices given under this Agreement shall be addressed as follows:

To the City:

City of New Bedford
Office of City Solicitor
133 William Street
New Bedford, MA 02740

To the Company:

Southcoast Apothecary, LLC
Attn: Troy DeMelo
170 Hadley Street
New Bedford, MA 02745

Notice shall be deemed given (a) two (2) business days after the date when it is deposited with the U.S. Post Office, if sent by first class or certified mail, (b) one (1) business day after the date when it is deposited with an overnight courier, if sent by overnight delivery, or (c) upon the date personal delivery is made and accepted.

23. No Joint Venture. The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to

establish the City, or the City and any other successor, affiliate or corporate entity, as joint ventures or partners with the Company.

24. Indemnification. Upon the Effective Date, the Company shall defend, indemnify, and hold harmless the City, its officers, employees, and agents ("**Indemnified Parties**") against any claims, actions, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits against or involving the Indemnified Parties, including reasonable attorneys' fees, reasonable experts' fees, and associated court costs ("**Liabilities**") that arise from or relate in any way to the Company's violation of this Agreement and/or any Massachusetts law or regulation governing medical marijuana and/or non-medical marijuana. This indemnification shall survive the termination or expiration of this Agreement for a period equal to the applicable statute of limitations period. If any action or proceeding is brought against the City arising out of any occurrence described in this section, upon notice from the City, the Company shall, at its expense, defend such action or proceeding using legal counsel approved by the City, provided that no such action or proceeding shall be settled without the approval of the City.


[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Host Community Agreement on the date set forth above.

FOR CITY OF NEW BEDFORD:

SOUTHCOAST APOTHECARY, LLC:

Signature



Signature

Jonathan Mitchell, Mayor


TROY DEMEO

Print Name

Date

9/4/19

Date



Signature

Michael Damaso

Print Name

9/4/19

Date



Item Title:

HOST COMMUNITY AGREEMENT - TREE BEARD, INC. 1 NAUSET STREET

Item Detail:

M2. COMMUNICATION, Mayor Mitchell, to City Council, submitting a copy of a Host Community Agreement with Tree Beard, Inc.; the company is currently seeking a license from the Marijuana Cannabis Control Commission to operate a recreational marijuana dispensary at 1 Nauset Street, under the agreement substantial benefits will be provided to the City and to the residents of New Bedford.

M2a. HOST COMMUNITY AGREEMENT, Tree Beard, Inc. to operate a recreational marijuana dispensary at 1 Nauset Street, New Bedford, MA 02746.

Additional Information:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Communication-Host Agreement-Tree Beard, Inc.	Cover Memo



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

September 5, 2019

City Council President Morad and
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the Council:

I write to inform the City Council that my Administration has negotiated a Host Community Agreement with Tree Beard, Incorporated.

The company is currently seeking a license from the Massachusetts Cannabis Control Commission to operate a recreational marijuana dispensary at 1 Nauset Street. Under the Agreement substantial benefits will be provided to the City and to the residents of New Bedford. These are summarized below:

Payments

An initial payment of \$25,000 upon opening of the facility and a total payment of 3% of gross retail sales revenue per year of operation.

Annual charitable contributions of \$50,000 or 1½% of gross retail sales, whichever is greater, to New Bedford-based organizations that deliver substance abuse prevention and education programs in the City's public-school district.

In any year in which gross sales reach \$2,500,000, an additional charitable contribution of \$50,000 is made. Should gross sales reach \$5,000,000, the additional charitable contribution is \$100,000.

Safety

The company must coordinate with the New Bedford Police Department on security planning, security camera installation, and other safety measures. The company must meet with police on a regular basis for a review of operations.

Employment

The company must, to the extent legally permissible, give priority to qualified residents of the City for employment at the facility. Applicants must do their best to comply with the *New Bedford Works* policy.

Taxes

The company will pay all real estate and personal property taxes on the facility.

Signage

Ground mounted, pylon, internally lit and/or flashing and off-premises signs are not allowed. Wall signs are limited in size to be smaller. The size and color of all signs shall be in scale and compatible with the surrounding buildings and street.

While a Host Community Agreement is an important milestone towards the operation of a recreational marijuana dispensary in the City, it is important to also note that many steps remain before such a facility opens.

Applicants must complete the Cannabis Control Commission application process and receive a provisional license. Once in possession of a provisional license, applicants must all obtain the required City approvals for their facilities. In this instance, approvals will include a Special Permit from the Planning Board, compliance with Board of Health regulations, and a license from the City Licensing Board.

In sum, for the proposed facility to become a reality in New Bedford several outstanding issues remain in need of attention. That said, I have undertaken all the actions available to me as Mayor under Massachusetts law to advance the proposal while ensuring that the City's interests are served.

I ask for the City Council's support for the attached Agreement so that together we can secure these benefits for New Bedford residents and businesses. Thank you for your consideration on this important matter.

Sincerely,



Jon Mitchell
Mayor

Attachment

CITY OF NEW BEDFORD
TREE BEARD INC., HOST COMMUNITY AGREEMENT FOR THE SITING OF A
RECREATIONAL MARIJUANA ESTABLISHMENT
IN THE CITY OF NEW BEDFORD

This Host Community Agreement (the "**Agreement**") is entered into this 4th day of September, 2019 (the "**Effective Date**") by and between the City of New Bedford, a Massachusetts municipal corporation acting by and through its Mayor, with a business address of 133 William Street, New Bedford, MA 02740 (the "**City**") and Tree Beard, Inc., a Massachusetts business entity with a business address of 319A Union Street, New Bedford, MA 02740 (the "**Company**") (City and Company, collectively the "**Parties**").

RECITALS

WHEREAS, the Company desires to locate a Recreational Marijuana Establishment ("**RME**") at 1 Nauset Street, New Bedford, MA 02746 MA (hereinafter the "**Facility**"), for the operation of a RME as a Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer and Marijuana Transporter in accordance with the laws of the Commonwealth of Massachusetts ("**MA Law**") and those of the City ("**Local Law**");

WHEREAS, the Company desires to provide community impact fee payments to the City pursuant to M.G.L. c. 94G, § 3(d) in order to address any reasonable costs imposed upon the City by Company's operations in the City;

WHEREAS, the Company desires to be a responsible corporate citizen in the City through its community outreach efforts and will aid in education and treatment programs designed to deliver substance abuse prevention and education in the City's public school district; and

WHEREAS, the City supports the Company's intention to operate an RME at the Facility with licenses to operate as a Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer and Marijuana Transporter.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual promises set forth below, the parties agree as follows:

AGREEMENT

1. Host Community Payments.

RME Related Payments. If the Company obtains final licenses, or their equivalent, for the operation of a RME as a Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer and Marijuana Transporter at the Facility from the Cannabis Control Commission ("**CCC**"), and receives all necessary approvals from the City to operate a RME as a Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer and Marijuana Transporter at the Facility, then the Company agrees to the following:

- i. The Company shall provide written notice to the City at least thirty (30) days in advance of the anticipated opening date of the Facility, and thereafter shall provide written notice to the City of the actual date of its first sale from the Facility (hereinafter the “**Sales Commencement Date**”).
- ii. The Company shall make a minimum of two annual payments to the City in the total amount of three percent (3%) of the gross sales of recreational marijuana at the Facility (the “**RME Payment**”).
- iii. The Company will make a one-time payment to the City in the sum of twenty-five thousand dollars (\$25,000) upon the Sales Commencement Date, and the initial RME Payment, less the aforementioned one-time payment of twenty-five thousand dollars (\$25,000), regarding the first twelve months of operations, shall be due on the first day of the fourteenth (14th) month following the Sales Commencement Date.
- iv. Subsequent RME Payments shall be made in two installments, one in month 7 of the agreement year to reflect the first six months of sales of that year, and the second reflecting the balance of sales payable within 60 days after the end of the year. For the purposes of this agreement, a year shall be the annual twelve (12) month period starting at the anniversary of the Sales Commencement Date.
- v. The term “gross sales” previously referenced shall mean the total of all retail sales of recreational marijuana transactions by the Company at the Facility and shall include the sale of adult-use marijuana, marijuana infused products, and any other products containing marijuana sold at the facility. The term shall not apply to sales between related business entities provided the company has informed the City of said relationship.
- vi. In the event that the Company enters into an HCA with another City in the Commonwealth of Massachusetts that contains financial terms more favorable than the financial term contained in this Agreement, then the Parties agree that this Agreement shall be amended so as to result in its financial terms being equally favorable to the City as those contained in the other City’s HCA. The Company represents and warrants to the City that it is not presently under an HCA with another Massachusetts City providing more favorable financial terms.

2. Term and Termination. The Term of this Agreement shall be five (5) years from the Effective Date (the “**Term**”), provided however Section 1 of this Agreement shall survive until the fifth annual RME Payment has been remitted to the City. In the event the Company loses or has its license(s), approvals, and/or permits to operate in the City revoked by the CCC or the City, this Agreement shall become null and void and all payments must be made. The Parties shall meet on the third year from the date of signing to review the terms of the HCA in good faith for compliance to MA Law and to see if any term amendments are required including, an increase of the community impact fee payments based on equitable principles and actual gross sales. Prior to the end of the Term, the Parties shall negotiate in good faith and unless prohibited

by Massachusetts General Law, a successor agreement, including an extension of the Payments called for herein.

If the Parties are unable to reach an agreement on a successor Agreement before the conclusion of the five (5) year term, the Annual Community Impact Fee shall be set at the average fee paid by Company over the previous three (3) years until such time as the Parties negotiate a successor Community Impact Fee.

3. Payments. The Company shall make the payments to the City as set forth in Section 1 of this Agreement. The Company acknowledges that the impacts of its operation may be impracticable to ascertain and assess as unique impacts may result in budgetary increases, though not separately identified; consequently, the Company acknowledges that the Payments due under this Agreement are reasonably related to Municipal impacts.

4. Failure to Remit Payments. The Parties acknowledge the Payments are expressly included as "other municipal charges" pursuant to G.L. c. 40, § 57. A City of New Bedford licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of the Company or agent thereof if the Company's name appears on a list furnished to the licensing authority from the City Treasurer of individuals delinquent on their taxes and/or other municipal charges.

5. Acknowledgements. The City understands and acknowledges that payments due pursuant to this Agreement are contingent upon the Company's receipt of all state and local approvals required to operate a RME as a Marijuana Retailer, Marijuana Cultivator, Marijuana Product Manufacturer and Marijuana Transporter in the City.

6. Review. If under applicable Massachusetts law the terms relating to payment under this Agreement are determined to any extent to be illegal, otherwise invalid, or incapable of being enforced, which unenforceability would materially and adversely affect the economic substance of the transactions contemplated by this Agreement, the City and the Company shall negotiate, in good faith and in accordance to MA Law. Provided, however, any amendments to this Agreement shall result in neutral economic impact to the City.

7. Local Taxes. At all times during the Term of this Agreement, property, both real and personal, owned or operated by the Company shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by the Company or by its landlord, and neither the Company nor its landlord shall object or otherwise challenge the taxability of such property. Company shall pay all sales taxes, if applicable, when due. Company reserves the right to contest only the amount of any local real and personal property taxes assessed.

8. Other Payments. The Company shall pay any and all fees associated with its annual purchases of utility services from all local government agencies. The Company will pay any and all municipal fees associated with the local permitting and licensing of the Marijuana Establishment.

The Company shall reimburse the City for any and all reasonable and customary consulting costs and fees related to any land use applications concerning the Facility, negotiation of this and any other related agreements, and review concerning the Facility, including planning, engineering, and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Facility. Said costs shall not involve work performed by City employees.

The Company shall reimburse the City for the actual outside costs incurred by the City in connection with holding public meetings not held in public buildings and forums not within the City's regularly scheduled public hearings and meetings, which are solely devoted to discussing the Facility. The Company shall also reimburse the City for costs incurred reviewing the proposed Facility applications and related equipment and systems and for any reasonable and customary consulting costs and fees.

The Company acknowledges that time is of the essence with respect to their timely payments of all funds required by this Host Community Agreement. If any such payments are not fully made within ten (10) business days of the date written demand has been received, the Company shall be required to pay the City a late payment penalty equal to five percent (5%) of that payment in addition to the required payment.

9. Annual Charitable/Non-Profit Contributions. The Company, in addition to any funds otherwise specified herein, agrees to make an annual contribution of \$50,000.00 or 1½ % of the establishment's gross sales, whichever is greater, in charitable donations per year to New Bedford based organizations that deliver substance abuse prevention and education programs in the City's public school district. The first \$25,000.00 portion of the payment for the first year of operation shall be paid on the facility's opening date and the remaining balance must be made within 12 months of opening. Company shall submit annual reports to the City indicating payments made under this provision. In any year where the Company reaches gross sales of \$2,500,000.00, the Company shall make an additional charitable contribution of \$50,000.00 and in a year where the Company reaches \$5,000,000.00 in gross sales, the Company shall make an additional charitable contribution of \$100,000.00. Any charitable payment will not reduce the Community Impact Fee amount nor is it considered a payment in response to a community impact.

10. Accounting and Review. The Company shall submit with each payment to the City under this Agreement, both a certification of the accurate payment amount and the gross sales during the time period the payment represents. The City shall have the right to inspect the Company's financial records it is required to submit to the CCC, including, but not limited to the Metrc seed to sale tracking system, for the time period the payment to the City under this Agreement represents. The Company shall maintain its books, financial records and other compilations of data pertinent to the requirements of this Agreement in accordance with standard accounting practices and the regulations or guidelines of the CCC. All records shall be retained for a period of at least seven (7) years.

So long as this Agreement is in effect and for a period of three (3) years thereafter, the City shall have the right to examine audit and copy any portion(s) of Company's books and financial

records, including but not limited to all sales transaction records, to determine the accuracy of the Payments. Examinations may be made upon not less than thirty (30) days prior written notice from the City and shall occur only during normal business hours at such place where said books and financial records are maintained. The City's examination, copying or audit, as aforesaid, shall be conducted in such manner as to not interfere with Company's normal business activities.

In the Event that the Parties disagree as to the accuracy of the certification of the Company's annual sales, the City may conduct an audit of such sales at the expense of the Company. The City shall first notify the Company of any proposed inaccuracy and the Company shall have thirty days to respond prior to the City conducting an audit. If, after such audit and re-computation, an additional fee or payment is owed to the City, a penalty of five percent (5%) or five thousand dollars (\$5,000), whichever is greater, will be immediately due in addition to any amounts owed.

11. Additional Obligations.

a. Local Vendors – to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to qualified local businesses and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility.

b. Employment – except for senior management, and to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to hire qualified residents of the City as employees of the Facility. Company shall use its best efforts to comply with the New Bedford Works policy, the terms of which are incorporated herein.

c. The Company shall, at least annually, provide the City with copies of all reports submitted to the CCC regarding the Company's operations in the City.

d. The Company will work cooperatively with all necessary municipal departments, boards, commissions, and agencies to ensure that the Company's operations are compliant with the City's codes, rules, and regulations.

e. The Company will comply with the City's non-discrimination ordinance in hiring, transacting business and entering into contracts and will seek to hire employees and engage in contracts with a preference for diversity and supporting minority and women-owned businesses.

f. The facility shall be designed, constructed, renovated, or improved to reflect high quality construction standards and seek to improve the general design aesthetic of the neighborhood. The facility shall, at a minimum, reflect the following:

- i. Facade Variation: For all development and redevelopment involving new construction, the massing, façades, and roof configuration of a building shall be varied via constructed or two-dimensional means. If a building façade is more than 50 feet in length, it shall

include a minimum of 10 feet of variation in the building footprint (set-back or projection in the building wall) for every 50 feet of façade length, and related changes in the roofline in order to reduce the apparent mass of the building.

- ii. **Building Materials:** Use high quality, traditional materials that weather naturally on the exterior of the building to reflect regional building traditions. Alternatively, incorporate low-reflective, neutral, and earth tones to retain the subtle character of the region's traditional materials. In areas not visible from regional roadways or distinctive community districts, use of nontraditional materials, forms, and site designs may be appropriate. In such areas, maintenance of adequate landscape buffers on the subject property shall be required to ensure that the proposed development is screened from view. Metal and vinyl siding are prohibited.
- iii. **Historic Buildings:** For all projects located in historic buildings, design guidelines of the Bedford Landing 40C district shall apply.
- iv. **Temporary Signage:** The only temporary signage allowed shall be banner signage bearing the company logo, no greater than 25 SF, at a designated adults-only City permitted special event and may only remain up for no longer than three days.
- v. **On-Site Signage:** Ground mounted, pylon, internally lit and/or flashing signs shall not be permitted. Wall signs shall be limited in size to be read at a pedestrian scale. The size and color of all signs shall be in scale and compatible with the surrounding buildings and street. When more than one sign is used, the graphics shall be coordinated to present a unified image. All signage shall, at a minimum, be subject to requirements of New Bedford Code of Ordinances S. 3200 and Cannabis Control Commission. In the event of any conflict between said requirements and this Agreement, the more restrictive requirement shall prevail. Logos shall be tasteful and ambiguous in nature. All proposed signage (Wall, ground, blade, or otherwise) is subject to administrative approval by the Planning department.
- vi. **Off-Premises Signage:** The Company agrees that neither it nor its agents will erect, place or otherwise establish any off-premises sign, other than the temporary signage permitted herein.
- vii. **Lighting:** Site lighting and window displays shall be tasteful and conform with dark sky guidelines. No up lights, flashing or colored LED lights allowed on the premises. A photometric lighting plan is required under site plan review and shall not be waived.
- viii. **Site Landscaping:** Use substantial landscape buffers to screen new development. Loading areas should be sited outside primary visual corridors or shielded from view by separate structures, projecting building wings, or distinctive landscaping and fencing. Outdoor storage of any kind is prohibited.
- ix. **Parking:** Ample parking shall be provided via an engineered site plan filed under Site Plan Review. Parking plan must be peer reviewed for traffic implications via an

engineered traffic study at the Special Permit approval stage. A transportation management plan will also be required for all Companies which addresses anticipated peak traffic during grand opening and holidays.

- x. To the fullest extent practicable, the facility's power supply shall use renewable power sources.

12. Community Health Impact Assessment. Prior to the Sales Commencement Date, the Company must conduct a Health Impact Assessment (HIA) for the neighborhood of their proposed location. The HIA must be conducted by a firm approved by the City Health Department and undertaken in cooperation with the Board of Health. The HIA may utilize the most recent Community Health Needs Assessment (CHNA) prepared by Southcoast Hospitals Group as a baseline but every effort shall be made to make the assessment as site specific as possible with no greater a radius than one mile of the site. The HIA must include at least two community meetings regarding the proposed operation with notice to the neighborhood and conducted in a City location as close as possible to the proposed site. The Company is responsible for all costs associated with the community meetings and the HIA. The Company must make every effort to incorporate the recommendations of the Board of Health in the operations plan for the Facility.

13. Support. The City agrees to submit to the CCC all documentation and information required by the CCC from the City for the Company to obtain approval to operate. The City agrees to support Company's application(s) with the CCC but makes no representation or promise that it will act on any other license or permit request in any way other than in the City's normal and regular course of conduct in accordance with the applicable laws, codes, rules, and regulations.

14. Local Authority. This Agreement does not waive, limit, control, govern or in any way describe the legal authority of any Municipal board, commission, committee, officer or official to regulate, authorize, restrict, inspect, investigate, enforce against, or issue, deny, suspend or revoke any permit, license or other approval with respect to the Company or the premises on which the Company will operate; nor does it waive, limit, control, govern or in any way describe the legal authority of the New Bedford Police Department to investigate, prevent or take action against any criminal activity with respect to the Company or, the premises on which the Company will operate.

15. On-site Consumption. The Company agrees that, even if permitted by statute or regulation, it will prohibit on-site consumption of marijuana and marijuana-infused products at the Facility except for quality control conducted in accordance to the Company's strict policies and procedures including employee training, testing protocols, dosage requirements and diversion prevention.

16. Security. The Company shall maintain security at the Facility in accordance with a security plan approved by the CCC and the City. In addition, the Company shall comply with MA Law and Local Law regarding security of the Facility. At a minimum, the Company shall:

- i. Provide a security plan to be reviewed and approved by the Chief of Police annually. The Company shall present all proposed amendments to the security plan to the Chief of Police for prior approval.
- ii. Engage in periodic meetings with the Police Department to review operational concerns or other issues and shall promptly report the discovery of the following to City police within twenty-four (24) hours: diversion of marijuana; unusual discrepancies identified during inventory, theft, loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport; any suspicious act involving the sale, distribution, and delivery of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and any other breach of security.
- iii. Site interior and exterior security cameras in coordination with the Police Department and provide unimpeded access to all security camera feeds to the Police Department.
- iv. Comply with all the CCC's requirements regarding Criminal Offender Record Information (CORI) review for any new manager hired and the Police Chief shall review and approve, within thirty days of receiving said CORI report, whether the individual is suitable to hold the position, such approval not to be unreasonably denied, conditioned, or delayed.
- v. Refuse to complete a transaction to any customer if the customer appears to be under the influence of drugs or alcohol.
- vi. Verify the legal age of all customer using a government-issued identification prior to the customer being admitted into the facility and again prior to the completion of a transaction. Company must utilize electronic identification verification measures when possible.

17. Governing Law. This Agreement shall be governed and construed and enforced in accordance with the currently applicable laws of the Commonwealth of Massachusetts, without regard to the principals of conflicts of law thereof. The parties hereto expressly understand and agree that said law may change and place each party in a different financial position and have chosen to enter into this Agreement taking such possible change into account. The Parties expressly waive any defense to enforcement based upon nonconformance with federal law regarding the illegality of marijuana.

18. Amendments/Waiver. Amendments or waivers of any term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all Parties, prior to the effective date of the amendment.

19. Severability. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby with the exception of any term or condition regarding payment; provided that in the event that any term or condition regarding the payment of fees or annual charitable contributions shall be held invalid, illegal or unenforceable by a court of competent jurisdiction or the Cannabis Control Commission, this Agreement shall cease. To the extent the validity of this Agreement is challenged by the Company in a court of competent jurisdiction, and the validity of this Agreement is upheld, the Company shall be required to pay for any fees and costs incurred by the City in enforcing this Agreement.

20. Successors/Assigns. This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. The City shall not assign or transfer any interest or obligations in this Agreement without the prior written consent of the Company, which shall not be unreasonably delayed, conditioned, or withheld. The Company shall not assign or transfer any interest or obligation in this Agreement without the prior written consent of the City, which shall not be unreasonably delayed, conditioned, or withheld.

Events deemed an assignment include, without limitation: final and adjudicated bankruptcy whether voluntary or involuntary; takeover or merger by or with any other entity; outright sale of assets and equity, majority stock sale to another organization or entity for which the Company does not maintain a controlling equity interest; or any other change in ownership; and/or any other assignment not approved in advance in writing by the City.

21. Entire Agreement. This Agreement constitutes the entire integrated agreement between the Parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the Parties hereto.

22. Notices. Except as otherwise provided herein, any notices given under this Agreement shall be addressed as follows:

To the City:

City of New Bedford
Office of City Solicitor
133 William Street
New Bedford, MA 02740

To the Company:

Tree Beard Inc.
Attn: Nicholas A. Gomes, Esquire
319A Union Street
New Bedford, MA 02740

Notice shall be deemed given (a) two (2) business days after the date when it is deposited with the U.S. Post Office, if sent by first class or certified mail, (b) one (1) business day after the date when it is deposited with an overnight courier, if next business day delivery is required, or (c) upon the date personal delivery is made before 1:00p.m..

23. No Joint Venture. The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the City, or the City and any other successor, affiliate or corporate entity, as joint ventures or partners with the Company.

24. Indemnification. Upon the Effective Date, the Company shall defend, indemnify, and hold harmless the City, its officers, employees, and agents ("Indemnified Parties") against any claims, actions, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits against or involving the Indemnified Parties, including reasonable attorneys' fees, reasonable experts' fees, and associated court costs ("Liabilities") that arise from or relate in any way to the Company's violation of this Agreement and/or any Massachusetts law or regulation governing medical marijuana and/or non-medical marijuana. This indemnification shall survive the termination or expiration of this Agreement for a period equal to the applicable statute of limitations period. If any action or proceeding is brought against the City arising out of any occurrence described in this section, upon notice from the City, the Company shall, at its expense, defend such action or proceeding using legal counsel approved by the City, provided that no such action or proceeding shall be settled without the approval of the City.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Host Community Agreement on the date set forth above.

FOR CITY OF NEW BEDFORD:

FOR TREE BEARD INC:

Signature

Nicholas A. Gomes
Signature

Jonathan Mitchell
Mayor of New Bedford

Nicholas A. Gomes, Esquire
Chief Legal Officer (duly authorized)

Date

9/4/2019
Date



Item Title:

HOST COMMUNITY AGREEMENT - METRO HARVEST, INC., 606 TARKILN HILL ROAD

Item Detail:

M3. COMMUNICATION, Mayor Mitchell, to City Council, submitting a copy of a Host Community Agreement with Metro Harvest, Inc.; the company is currently seeking a license from the Marijuana Cannabis Control Commission to operate a recreational marijuana dispensary at 606 Tarkiln Hill Road, under the agreement substantial benefits will be provided to the City and to the residents of New Bedford.

M3a. HOST COMMUNITY AGREEMENT, Metro Harvest, Inc., to operate a recreational marijuana dispensary at 606 Tarkiln Hill Road, New Bedford, MA 02745.

Additional Information:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Communication-Host Agreement-Metro Harvest, Inc.	Cover Memo



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

September 5, 2019

City Council President Morad and
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the Council:

I write to inform the City Council that my Administration has negotiated a Host Community Agreement with Metro Harvest, Incorporated.

The company is currently seeking a license from the Massachusetts Cannabis Control Commission to operate a recreational marijuana dispensary at 606 Tarkiln Hill Road. Under the Agreement substantial benefits will be provided to the City and to the residents of New Bedford. These are summarized below:

Payments

An initial payment of \$25,000 upon opening of the facility and a total payment of 3% of gross retail sales revenue per year of operation.

Annual charitable contributions of \$50,000 or 1½% of gross retail sales, whichever is greater, to New Bedford-based organizations that deliver substance abuse prevention and education programs in the City's public-school district.

In any year in which gross sales reach \$2,500,000, an additional charitable contribution of \$50,000 is made. Should gross sales reach \$5,000,000, the additional charitable contribution is \$100,000.

Safety

The company must coordinate with the New Bedford Police Department on security planning, security camera installation, and other safety measures. The company must meet with police on a regular basis for a review of operations.

Employment

The company must, to the extent legally permissible, give priority to qualified residents of the City for employment at the facility. Applicants must do their best to comply with the *New Bedford Works* policy.

Taxes

The company will pay all real estate and personal property taxes on the facility.

Signage

Ground mounted, pylon, internally lit and/or flashing and off-premises signs are not allowed. Wall signs are limited in size to be smaller. The size and color of all signs shall be in scale and compatible with the surrounding buildings and street.

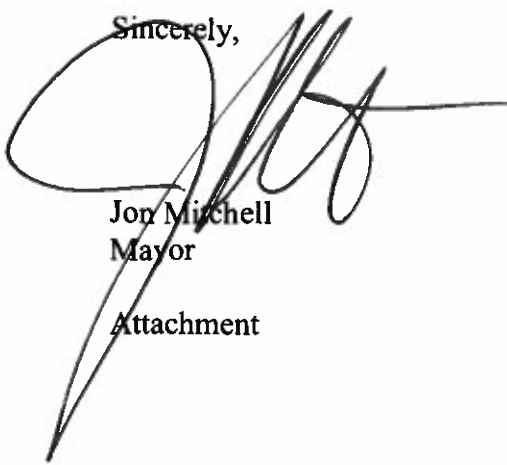
While a Host Community Agreement is an important milestone towards the operation of a recreational marijuana dispensary in the City, it is important to also note that many steps remain before such a facility opens.

Applicants must complete the Cannabis Control Commission application process and receive a provisional license. Once in possession of a provisional license, applicants must all obtain the required City approvals for their facilities. In this instance, approvals will include a Special Permit from the Planning Board, compliance with Board of Health regulations, and a license from the City Licensing Board.

In sum, for the proposed facility to become a reality in New Bedford several outstanding issues remain in need of attention. That said, I have undertaken all the actions available to me as Mayor under Massachusetts law to advance the proposal while ensuring that the City's interests are served.

I ask for the City Council's support for the attached Agreement so that together we can secure these benefits for New Bedford residents and businesses. Thank you for your consideration on this important matter.

Sincerely,



Jon Mitchell
Mayor

Attachment

CITY OF NEW BEDFORD

METRO HARVEST, INC. HOST COMMUNITY AGREEMENT FOR THE SITING OF A RECREATIONAL MARIJUANA RETAILER IN THE CITY OF NEW BEDFORD

This Host Community Agreement (the "**Agreement**") is entered into this 4th day of September, 2019 (the "**Effective Date**") by and between the City of New Bedford, a Massachusetts municipal corporation acting by and through its Mayor, with a business address of 133 William Street, New Bedford, MA 02740 (the "**City**") and Metro Harvest, Inc., a Massachusetts limited liability company with a business address of 292 Bedford Street, Bridgewater, MA 02324 (the "**Company**") (City and Company each a "**Party**" and collectively the "**Parties**").

RECITALS

WHEREAS, the Company desires to locate a Recreational Marijuana Retailer ("**RMR**") at 606 Tarkiln Hill Road, New Bedford, MA 02745 (the "**Property**" and together with the proposed RMR the "**Facility**"), for the retail sale of recreational marijuana in accordance with the laws of the Commonwealth of Massachusetts ("**MA Law**") and those of the City ("**Local Law**");

WHEREAS, the Company desires to provide community impact fee payments to the City pursuant to M.G.L. c. 94G, § 3(d), that shall be reasonably related to the costs imposed upon the City by Company's operations in the City;

WHEREAS, the Company desires to provide additional payments directly to the community at large to aid in education and treatment programs; and

WHEREAS, the City supports the Company's intention to operate an RMR at the Facility for the retail sale of recreational marijuana.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual promises set forth below, the parties agree as follows:

AGREEMENT

1. Host Community Payments. If the Company obtains a final license, or its equivalent, for the operation of the Facility from the Cannabis Control Commission ("**CCC**"), and receives all necessary approvals from the City to operate the Facility, then the Company agrees to the following:

a) Pursuant to M.G.L. ch. 94G, § 3(d), and as the same may be amended from time to time, the Company shall pay a fee to the City equal to, but not greater than, Three Percent (3%) of its annual Gross Sales (as defined herein) (the "**RMR Payment**"). The RMR Payment shall be made in two installments as follows: (a) Annually seven (7) months after the anniversary of the Sales Commencement Date (as defined herein) in an amount equal to Three Percent (3%) of the Company's Gross Sales through the prior six (6) months of

operations, and (b) annually within thirty (30) days of the anniversary of the Sales Commencement Date in an amount equal to Three Percent (3%) of the Company's Gross Sales through the prior six (6) months of operations.

b) Notwithstanding anything herein to the contrary, the Company shall make a one-time payment to the City in the sum of Twenty-five Thousand and 00/100 Dollars (\$25,000.00) upon the Sales Commencement Date (the "**Initial Payment**"), which amount shall be deducted from the first annual RMR Payment described above. If and to the extent that the first RMR Payment due to the City is for an amount less than Twenty-five Thousand and 00/100 Dollars (\$25,000.00), the second RMR Payment due to the City shall be reduced by an amount equal to the difference of Twenty-five Thousand Dollars and 00/100 (\$25,000.00) less the amount due under the first RMR Payment.

c) For the purposes of this Agreement, the term "**Sales Commencement Date**" shall mean the date in which the Company sells Marijuana or Marijuana-infused Product (each as defined in 935 CMR 500.002) to a natural person who is twenty-one (21) years of age or older (a "**Consumer**").

d) For purposes of this Agreement, the term "**Gross Sales**" shall mean the total of all sales of Marijuana or Marijuana-infused Products. Gross Sales shall not include: (a) the amounts of all refunds, credits, allowance and adjustments made to customers; and (b) the amounts of state or local sales tax or similar tax imposed by any governmental authority.

e) The Company shall provide written notice to the City at least thirty (30) days in advance of the anticipated opening date of the Facility, and thereafter shall, within seven (7) days of the Sales Commencement Date, provide written notice to the City setting forth the official Sales Commencement Date.

f) In the event that the Company enters into an HCA with another City in the Commonwealth of Massachusetts that contains financial terms more favorable than the financial term contained in this Agreement, then the Parties agree that this Agreement shall be amended so as to result in its financial terms being equally favorable to the City as those contained in the other City's HCA. The Company represents and warrants to the City that it is not presently under an HCA with another Massachusetts City providing more favorable financial terms.

2. **Term and Termination.** The Term of this Agreement shall be five (5) years from the Effective Date (the "**Term**"). In the event the Company loses or has its license(s), approvals, and/or permits to operate in the City revoked by the CCC or the City, this Agreement shall become null and void and any outstanding RMR Payments shall become due and payable within thirty (30) days of the termination of this Agreement. Prior to the end of the Term, the Parties shall negotiate, in good faith, a successor agreement, including an extension of the Payments called for herein.

3. **Payments.** The Company shall make the payments to the City as set forth in Section 1 of this Agreement.

4. **Failure to Remit Payments.** The Parties acknowledge the Payments are expressly included as "other municipal charges" pursuant to G.L. c. 40, § 57. A City of New Bedford licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of the Company or agent thereof if the Company's fails to timely pay any RMR Payments.

5. **Acknowledgements.** The City understands and acknowledges that payments due pursuant to this Agreement are contingent upon the Company's receipt of all state and local approvals required to operate the Facility.

6. **Review.** If under applicable Massachusetts law the terms relating to payment under this Agreement are determined to any extent to be illegal, otherwise invalid, or incapable of being enforced, which unenforceability would materially and adversely affect the economic substance of the transactions contemplated by this Agreement, the City and the Company shall negotiate, in good faith, amendments to this Agreement so as to result in neutral economic impact to the City to the extent permissible by law.

7. **Local Taxes.** At all times during the Term of this Agreement, real estate and personal property taxes owed by the Company shall be due and payable.

8. **Other Payments.** The Company shall pay any and all fees associated with its annual purchases of utility services from all local government agencies.

The Company shall reimburse the City for any and all reasonable and customary consulting costs and fees related to any land use applications concerning the Facility, negotiation of this Agreement, and review concerning the Facility, including planning, engineering, and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Facility. In no event shall the Company be responsible for reimbursing the City for costs associated with the operating of the City's offices in their regular and customary course, including, but not limited to wages for City employees.

The Company shall reimburse the City for the actual costs incurred by the City in connection with holding public meetings not held in public buildings and forums not within the City's regularly scheduled public hearings and meetings, which are solely devoted to discussing the Facility. Such costs shall be limited to advertising costs and consultant attendance at the aforementioned meetings.

The Company acknowledges that time is of the essence with respect to their timely payments of all funds required by this Agreement. If any such payments are not fully made within ten (10) business days of the date written demand has been actually received by the Company, the Company shall be required to pay the City a late payment penalty equal to five percent (5%) of that payment in addition to the required payment.

9. **Annual Charitable/Non-Profit Contributions.** The Company, in addition to any funds otherwise specified herein, agrees to make an annual contribution of \$50,000.00 or 1½ % of the

establishment's gross sales, whichever is greater, in charitable donations per year to New Bedford based organizations that deliver substance abuse prevention and education programs in the City's public-school district. The first \$25,000.00 portion of the payment for the first year of operation shall be paid on the facility's opening date and the remaining balance must be made within 12 months of opening. Company shall submit annual reports to the City indicating payments made under this provision. In any year where the Company reaches gross sales of \$2,500,000.00, the Company shall make an additional charitable contribution of \$50,000.00 and in a year where the Company reaches \$5,000,000.00 in gross sales, the Company shall make an additional charitable contribution of \$100,000.00. Any charitable payment will not reduce the Community Impact Fee amount nor is it considered a payment in response to a community impact.

10. Accounting and Review. The Company shall keep and maintain financial records in accordance with generally accepted accounting principles. Such records shall be available for inspection by the City, upon request, and shall include, but not be limited to, all financial records required in any section of 935 CMR 500.000, and business records, in accordance with 935 CMR 500.105(e), which shall include manual or computerized records of: (1) Assets and liabilities; (2) Monetary transactions; (3) Books of accounts, which shall include journals, ledgers, and supporting documents, agreements, checks, invoices, and vouchers; (4) Sales records including the quantity, form, and cost of marijuana products; and (5) Salary and wages paid to each employee, stipend paid to each board member, and any executive compensation, bonus, benefit, or item of value paid to any individual affiliated with a Marijuana Establishment, including members of the nonprofit corporation, if any (together these shall be referred to as the **"Financial Records"**).

Following the closure of the Facility, the Company shall keep all records for at least two (2) years at the Company's expense and in a form and location acceptable to the CCC.

So long as this Agreement is in effect and for a period of two (2) years thereafter, the City shall have the right to examine and audit the Company's Financial Records. Examinations may be made upon not less than thirty (30) days prior written notice from the City and shall occur only during normal business hours at such place where said books and financial records are maintained. The City's examination or audit, as aforesaid, shall be conducted in such manner as to not interfere with Company's normal business activities.

In the event that the Parties disagree as to the accuracy of the certification of the Company's annual sales, the City may conduct an audit of such sales at the expense of the Company. If, after such audit and re-computation, an additional fee or payment is owed to the City, a penalty of ten percent (10%) or five thousand dollars (\$5,000), whichever is greater, not to exceed \$10,000, will be added to the amount due.

11. Community Support and Additional Obligations.

a. Local Vendors – to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to qualified local businesses

and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Facility.

b. **Employment:** except for senior management, and to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the Company shall use good faith efforts in a legal and non-discriminatory manner to give priority to hire qualified residents of the City as employees of the Facility. Company shall use its best efforts to comply with the New Bedford Works policy, the terms of which are incorporated herein.

c. The Company shall, at least annually, provide the City with copies of all reports submitted to the CCC regarding the Company's operations in the City.

d. The Company will work cooperatively with all necessary municipal departments, boards, commissions, and agencies to ensure that the Company's operations are compliant with the City's codes, rules, and regulations.

e. The Company will comply with the City's non-discrimination ordinance in hiring, transacting business and entering into contracts and to the extent allowed by law, the Company will seek to hire employees and engage in contracts with a preference for diversity and supporting minority and women-owned businesses.

f. The Facility shall be designed, constructed, renovated, or improved to reflect high quality construction standards and seek to improve the general design aesthetic of the neighborhood. The facility shall, at a minimum, reflect the following:

i. **Facade Variation:** For all development and redevelopment involving new construction, the massing, façades, and roof configuration of a building shall be varied via constructed or two-dimensional means. If a building façade is more than 50 feet in length, it shall include a minimum of 10 feet of variation in the building footprint (set-back or projection in the building wall) for every 50 feet of façade length, and related changes in the roofline in order to reduce the apparent mass of the building.

ii. **Building Materials:** Use high quality, traditional materials that weather naturally on the exterior of the building to reflect regional building traditions. Alternatively, incorporate low-reflective, neutral, and earth tones to retain the subtle character of the region's traditional materials. In areas not visible from regional roadways or distinctive community districts, use of nontraditional materials, forms, and site designs may be appropriate. In such areas, maintenance of adequate landscape buffers on the subject property shall be required to ensure that the proposed development is screened from view. Metal and vinyl siding are prohibited.

iii. Historic Buildings: For all projects located in historic buildings, design guidelines of the Bedford Landing 40C district shall apply.

iv. Temporary Signage: The only temporary signage allowed shall be banner signage bearing the company logo, no greater than 25 SF, at a designated adults-only City permitted special event and may only remain up for no longer than two days.

v. On-Site Signage: Ground mounted, pylon, internally lit and/or flashing signs shall not be permitted. Wall signs shall be limited in size to be read at a pedestrian scale. The size and color of all signs shall be in scale and compatible with the surrounding buildings and street. When more than one sign is used, the graphics shall be coordinated to present a unified image. All signage shall, at a minimum, be subject to requirements of New Bedford Code of Ordinances S. 3200 and Cannabis Control Commission. In the event of any conflict between said requirements and this Agreement, the more restrictive requirement shall prevail. Logos shall be tasteful and ambiguous in nature. All proposed signage (Wall, ground, blade, or otherwise) is subject to administrative approval by the Planning department.

vi. Off-Premises Signage: The Company agrees that neither it nor its agents will erect, place or otherwise establish any off-premises sign, other than the temporary signage permitted herein.

vii. Lighting: Site lighting and window displays shall be tasteful and conform with dark sky guidelines. No up lights, flashing or colored LED lights allowed on the premises. A photometric lighting plan is required under site plan review and shall not be waived.

viii. Site Landscaping: Use substantial landscape buffers to screen new development. Loading areas should be sited outside primary visual corridors or shielded from view by separate structures, projecting building wings, or distinctive landscaping and fencing. Outdoor storage of any kind is prohibited.

ix. Parking: Ample parking shall be provided via an engineered site plan filed under Site Plan Review. Parking plan must be peer reviewed for traffic implications via an engineered traffic study at the Special Permit approval stage. A transportation management plan will also be required for all Companies which addresses anticipated peak traffic during grand opening and holidays.

x. To the fullest extent practicable, the facility's power supply shall use renewable power sources.

12. Community Health Impact Assessment. Prior to the Sales Commencement Date, the Company must conduct a Health Impact Assessment (HIA) for the neighborhood of their proposed location. The HIA must be conducted by a firm approved by the City Health Department and undertaken in cooperation with the Board of Health. The HIA may utilize the most recent Community Health Needs Assessment (CHNA) prepared by Southcoast Hospitals

Group as a baseline but every effort shall be made to make the assessment as site specific as possible with no greater a radius than one mile of the site. The HIA must include at least two community meetings regarding the proposed operation with notice to the neighborhood and conducted in a City location as close as possible to the proposed site. The Company must make every effort to incorporate the recommendations of the Board of Health in the operations plan for the Facility.

13. Support. The City agrees to submit to the CCC all documentation and information required by the CCC from the City for the Company to obtain approval to operate. The City agrees to support Company's application(s) with the CCC but makes no representation or promise that it will act on any other license or permit request in any way other than by the City's normal and regular course of conduct and in accordance with their codes, rules, and regulations and any statutory guidelines governing them.

14. Local Authority. This Agreement does not waive, limit, control, govern or in any way describe the legal authority of any municipal board, commission, committee, officer or official to regulate, authorize, restrict, inspect, investigate, enforce against, or issue, deny, suspend or revoke any permit, license or other approval with respect to the Company or the premises on which the Company will operate; nor does it waive, limit, control, govern or in any way describe the legal authority of the New Bedford Police Department to investigate, prevent or take action against any criminal activity with respect to the Company or, the premises on which the Company will operate.

15. On-site Consumption. The Company agrees that, even if permitted by statute or regulation, it will prohibit on-site consumption of marijuana and marijuana-infused products at the Facility.

16. Security. The Company shall maintain security at the Facility in accordance with a security plan approved by the CCC and the City. In addition, the Company shall comply with MA Law and Local Law regarding security of the Facility. At a minimum, the Company shall:

- i. Provide a security plan to be reviewed and approved by the Chief of Police initially and anytime there is a substantive change thereto.
- ii. Engage in periodic meetings with the Police Department to review operational concerns or other issues.
- iii. Promptly report the discovery of the following to City police within twenty-four (24) hours: diversion of marijuana; unusual discrepancies identified during inventory, theft, loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport; any suspicious act involving the sale, distribution, and delivery of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event that requires response by public

safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight hours; and any other breach of security

iv. Site interior and exterior security cameras in coordination with the Police Department, subject to final approval by the CCC, and provide access to all security camera feeds to the Police Department.

iv. Comply with all the CCC's requirements regarding Criminal Offender Record Information (CORI) review for any new manager hired and the Police Chief shall review, within thirty days of receiving said CORI report, and provide recommendations as to whether the individual is suitable to hold the position.

v. Refuse to complete a transaction to any customer if the customer reasonably believes to be under the influence of drugs or alcohol.

vi. Verify the legal age of all customer using a government-issued identification prior to the customer being admitted into the facility and again prior to the completion of a transaction. Company must utilize electronic identification verification measures when possible.

17. Governing Law. This Agreement shall be governed and construed and enforced in accordance with the currently applicable laws of the Commonwealth of Massachusetts, without regard to the principals of conflicts of law thereof. The Parties expressly waive any defense to enforcement of this Agreement based upon nonconformance with federal law regarding the illegality of marijuana.

18. Amendments/Waiver. Amendments or waivers of any term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all Parties prior to the effective date of the amendment.

19. Severability. The Company agrees not to contest any term or condition of this Agreement, however, if any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby with the exception of any term or condition regarding payment; provided that in the event any term or condition regarding payment of fees or annual charitable contributions shall be held invalid, illegal or unenforceable by a court of competent jurisdiction or the Cannabis Control Commission, said payment, fees or charitable contribution shall be made a part of the Company's Positive Impact Plan undertaken and submitted in connection with its license from the Cannabis Control Commission. To the extent the validity of this Agreement is challenged by the Company in a court of competent jurisdiction, and the validity of this Agreement is upheld, the Company shall be required to pay for any fees and costs incurred by the City in enforcing this Agreement.

20. Successors/Assigns. This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. The City shall not assign or transfer any interest or obligations in this Agreement without the prior written consent of the Company, which shall not be unreasonably delayed, conditioned, or withheld. The Company shall not assign or transfer any interest or obligation in this Agreement without the prior written consent of the City, which shall not be unreasonably delayed, conditioned, or withheld; provided however, such consent shall not be required in the event such transfer or assignment is between the Operator and another entity which is authorized by the CCC or other authorizing entity to operate the Facility, or if such assignment or transfer is the result of: (i) an affiliate entity of the Company; or (ii) an entity which controls, is controlled by, or is under the common control of the Company; or (iii) to an entity into or with which Company may be merged or consolidated or by which it is acquired.

21. Entire Agreement. This Agreement constitutes the entire integrated agreement between the Parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the Parties hereto. This Agreement may be signed in multiple counterparts.

22. Notices. Except as otherwise provided herein, any notices given under this Agreement shall be addressed as follows:

To the City:

City of New Bedford
Office of City Solicitor
133 William Street
New Bedford, MA 02740

To the Company:

Metro Harvest, Inc.
Attn: Steve LaBelle
292 Bedford Street, Bridgewater, MA 02324

Notice shall be deemed given (a) two (2) business days after the date when it is deposited with the U.S. Post Office, if sent by first class or certified mail, (b) one (1) business day after the date when it is deposited with an overnight courier, if sent by overnight delivery, or (c) upon the date personal delivery is made and accepted.

23. No Joint Venture. The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the City, or the City and any other successor, affiliate or corporate entity, as joint ventures or partners with the Company.

24. Indemnification. Upon the Effective Date, the Company shall defend, indemnify, and hold harmless the City, its officers, employees, and agents (“**Indemnified Parties**”) against any claims, actions, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits against or involving the Indemnified Parties, including reasonable attorneys’ fees, reasonable experts’ fees, and associated court costs (“**Liabilities**”) that arise from or relate in any way to the Company’s violation of this Agreement and/or any Massachusetts law or regulation governing medical marijuana and/or non-medical marijuana. This indemnification shall survive the termination or expiration of this Agreement for a period equal to the applicable statute of limitations period. If any action or proceeding is brought against the City arising out of any occurrence described in this section, upon notice from the City, the Company shall, at its expense, defend such action or proceeding using legal counsel approved by the City, provided that no such action or proceeding shall be settled without the approval of the City.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Host Community Agreement on the date set forth above.

FOR CITY OF NEW BEDFORD:

METRO HARVEST, INC:

Signature

Signature

Jonathan Mitchell, Mayor

Print Name

Date

Date

S. LaBelle

Steve LaBelle

9/4/19



Item Title:

COMMUNICATION - AIRPORT GRILLE, LLC - LEASE APPROVAL

Item Detail:

M4. COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDER, authorizing the Mayor to execute on behalf of the City a Lease with a two (2) year term with four (4) additional two (2) year options between the City of New Bedford acting through its Airport Commission and the Airport Grille LLC.

M4a. AN ORDER,

Additional Information:

ATTACHMENTS:

Description	Type
Communication-Lease Approval-Airport Grill	Cover Memo



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

August 29, 2019

Council President Linda M. Morad
Members of the City Council
City of New Bedford
133 William Street, Room 215
New Bedford, MA 02740

RE: LEASE FOR AIRPORT GRILL LLC

Dear Council President Morad and Honorable Members:

Enclosed for the City Council's consideration meeting please see Lease between the City of New Bedford/Airport Commission and Airport Grille LLC. The current Lessee, Restaurant Partners LLC did not exercise its most recent option to extend the Lease and therefore the Lease expired on August 28th and the restaurant has closed.

The attached Lease is a two year Lease with four options to renew for an additional two years at a time. The rent under this new Lease with options calls for rent greater than that which the old tenant would have been paying had the old tenant exercised its option to extend the Lease.

I would appreciate it if you would place this on the City Council Agenda for its consideration at its September 12th meeting. A copy of the proposed Order is enclosed with the proposed Lease.

Very truly yours,


Jonathan F. Mitchell
Mayor

EJ/bar

enclosure



CITY OF NEW BEDFORD

CITY COUNCIL

September 12, 2019

31

Ordered, that the Mayor is authorized to execute on behalf of the City of New Bedford a Lease with a Two Year Term with four additional two year options between the City of New Bedford, acting through its Airport Commission and the Airport Grill LLC. A copy of the proposed Lease is attached hereto and made a part hereof.

PRESENTED TO THE MAYOR

For approval

City Clerk

Approved

Mayor

IN CITY COUNCIL

City Clerk

LEASE

By and Between

NEW BEDFORD REGIONAL
AIRPORT COMMISSION

AND

Airport Grille LLC

LEASE Approved by NBAC on
August 28, 2019

LEASE Approved by New Bedford City Council on
September 12, 2019

LEASE

THIS AGREEMENT OF LEASE, (herein called "Agreement" or "Lease") entered into on the 28th day of August 2019, by and between the CITY OF NEW BEDFORD, acting through the New Bedford Regional Airport Commission, (herein after called "Landlord"), a Massachusetts Municipal Corporation having its office at 1569 Airport Road, New Bedford, Massachusetts 02746-1369, and Airport Grille, LLC, a Massachusetts Limited Liability Company (herein after called "Tenant" and/or "Restaurant") having its office c/o, Davis Slutz, 8 Village Road, Lakeville, MA 02347, evidences the following:

WHEREAS, Landlord desires to lease a restaurant, located within the terminal building at the New Bedford Regional Airport; and

WHEREAS, the Landlord has the authority as a Municipal Corporation organized and existing under the statutes of the Commonwealth of Massachusetts to enter into this Agreement; and

WHEREAS, Landlord agrees to let to Tenant the space necessary for the purpose intended and otherwise perform as herein set forth,

NOW, THEREFORE, for and in consideration of the rents herein required to be paid, and of the covenants and agreements herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

Property Description and Use

Landlord hereby lets to Tenant and Tenant hereby hires and takes from Landlord that certain space on the westerly end of the ground level of the main terminal building including a storage room attached thereto and an outside patio area as shown on Exhibit 1 attached hereto (the "Premises") located within the Main Terminal Building at the New Bedford Regional Airport (the "Building"). The Tenant shall as appurtenant to the Premises have, subject to Landlord's reasonable Rules and Regulations, if any, the non-exclusive right to use and permit its guest, invitees, licensees and employees to use in common with others, public or common lobbies, hallways, stairways, other common areas including parking, and sanitary facilities in the Building, for their intended uses

ARTICLE 2

Quiet Enjoyment

Landlord agrees that on payment of rentals, fees and charges herein provided and Tenant's performance hereunder, Tenant shall peaceably and quietly have and enjoy the Premises.

ARTICLE 3

Commencement of Term

The initial term of this Lease ("Initial Term") shall commence on the execution date of this Lease, and shall terminate on the day which immediately precedes the (2nd) annual anniversary of the Rent Commencement Date (as hereinafter defined). Unless Tenant exercises one or more options in accordance with Article 4.

The Rent Commencement Date shall commence on the earlier of the date that a certificate of occupancy allowing the Premises to be used for the Permitted Use shall have been issued by the City of New Bedford (the "CO"), or the date on which Tenant shall take possession of any portion of the Premises for the purpose of conducting business (the "Rent Commencement Date"), or October 1, 2019.

The Landlord shall permit the Tenant (at Tenant's sole risk and expense) to enter the Premises prior to the Rent Commencement Date for the purpose of, making renovations pursuant to a License between its parties, taking measurements, installing equipment, furniture, furnishings and the like. Tenant shall indemnify, defend and hold Landlord harmless from all losses or liability arising from such access except for losses and liability incurred due to Landlord's, its employee's or contractors' negligence or willful misconduct. Landlord shall have no responsibility for Tenant's property in the Premises prior to the Rent Commencement Date except for losses and liability incurred due to Landlord's or its contractors' negligence or willful misconduct.

After the Rent Commencement Date has been determined, Landlord and Tenant agree to execute a Memorandum of Lease in the form attached hereto as Exhibit 2 to confirm the Commencement Date, the Rent Commencement Date and expiration date of the Lease.

ARTICLE 4

Length of Term

The initial term of this Lease shall be for a term of two (2) years (the "Initial Term") following the Rent Commencement Date with the Tenant's option to renew for four (4) additional two (2) year periods upon terms and conditions set forth in this Lease (each an

Extended Term" which with the Initial Term are referred to collectively as the "Term"). In the event the Tenant wishes to exercise an option to renew for a two (2) year Extended Term, the Tenant shall notify the Landlord in writing at least ninety (90) days prior to the end of the then current term.

ARTICLE 5

Condition of the Premises

A. Except as set forth in the Paragraph B of this Article 5, Landlord shall deliver to Tenant the Premises in "as is" condition. Tenant acknowledges that Landlord has made no representations as to the condition of the Premises and that the Tenant has inspected the Premises and is familiar with the same.

ARTICLE 6

Use of Premises

The Premises shall be used only for a restaurant and matters incidental thereto (the "Permitted Use"), and for no other use without Landlord's prior written consent, which consent shall not be unreasonably withheld. Tenant represents and warrants that its use of the Premises will comply with all applicable Governmental Regulations. Tenant will not occupy or use, or permit any portion of the Premises to be occupied or used for any business or purpose which is unlawful in part or in whole or reasonably deemed by Landlord to be disreputable in any manner, or extra hazardous, or interfere with the peaceful enjoyment by other Tenants of the Building of their respective premises. Tenant will maintain the Premises open for business on a regular and continual basis.

The Tenant's employees shall not be employees of the New Bedford Regional Airport.

ARTICLE 7

INTENTIONALLY DELETED

ARTICLE 8

Signs

Subject to the written approval of the airport manager, such approval not to be unreasonably withheld, Tenant shall have the right to erect reasonable signage on airport property, and specifically on the New Bedford Regional Airport Terminal Building façade.

ARTICLE 9

Insurance

Tenant and Landlord shall be responsible for such damage to the Premises as shall be caused by its negligence or that of its agents, servants, contractors, employees or invitees. In no way shall this clause be construed so as to expand upon or increase the limits of liability of the Landlord pursuant to Massachusetts General Laws Chapter 258.

In no event shall any insurer have a right of subrogation by virtue of this indemnification.

Tenant shall obtain and maintain during the entire term of this Lease, at its sole cost and expense, the following minimum insurance coverages to cover any claims made from injuries, damage or theft. Naming the City of New Bedford as an additional insured, as appropriate on each applicable policy.

- A. During any period of construction called for in this Lease, prior to Tenant's occupancy of the Premises:
1. Workers Compensation and employees liability insurance in the form and in the amount prescribed by law for such coverage. Tenant shall not opt out of such coverage during such period of construction without prior written approval by the Landlord.
 2. Separate Commercial General Liability Insurance Policies with minimal limits of \$3,000,000, single limits per occurrence for personal or bodily injuries including death and for property damage.
 3. Comprehensive Auto and Truck Liability Insurance covering owned, hired, and non-owned vehicles with a minimum of \$1,000,000. combined single limit per occurrence for personal or bodily injuries including death and property damage.
 4. For contractual liability coverage including but not limited to liabilities assumed under the indemnification clause of this agreement.
 5. Builders Risk Insurance for an amount equal to the value of Tenant's facilities and improvements.

6. Fire damage insurance in the amount of \$3,000,000.
 7. Medical expense coverage in the amount of \$1,000,000.
- B. Following the Tenant's occupancy of the Premises or any part thereof, the Tenant shall, with respect to the Premises, or any part thereof, so occupied cause the Tenant, its respective directors, officers, agents, employees and members and the Tenant to be insured as follows: Naming the City of New Bedford as an additional insured, as appropriate on each applicable policy..
1. Workers Compensation and employees liability insurance in the form and in the amount prescribed by law for such coverage. Tenant shall not opt out of such coverage during the term hereof without the prior written approval of the Landlord.
 2. Commercial general liability insurance against the claims of any and all persons for bodily injuries, including death and property damage, arising out of the use or occupancy of the leased premises by the Tenant, its, officers, employees, agents, guests, patrons or invitees in the sum of not less than \$3,000,000 combined single limit per occurrence. The insurance shall be primary without rights of contribution from Landlord's insurance, include contractual coverage under the indemnification provisions contained herein, shall name the Landlord as an additional insured, and shall be at the Tenant's sole cost and expense.
 3. Comprehensive Automobile and Truck Liability insurance covering owned, hired, and non-owned vehicles with minimum limits of \$1,000,000. combined single limit per occurrence for personal or bodily injury (including death) and for injury to or destruction of property.
 4. All Risk coverage equal to 100% of replacement cost of Tenant's facilities and improvements.
 5. Medical expense coverage in the amount of \$100,000.
 6. Liquor liability coverage in the amount of \$3,000,000.
 7. Business Interruption Insurance in the amount of \$100,000.
- C. Special Conditions. Concerning insurance to be furnished by Tenant, it is a condition precedent to the acceptability thereof that: 1) any policy submitted shall not be subject to limitations, conditions or restrictions inconsistent with the intent of the insurance requirements to be fulfilled by Tenant; 2) all policies shall be written through an insurance company of recognized responsibility, duly authorized by the Commonwealth of Massachusetts to transact that class of insurance in the Commonwealth of Massachusetts. Companies providing

insurance coverage shall be required to have nothing less than an "A" rating of better by the A.M. Best Company of Aldrich, New Jersey; 3) No special payment shall be made by the Landlord for any insurance that the Tenant may be required to carry. 4) The Landlord shall be named as an additional insured on the following policies: Comprehensive General Liability, All Risk Coverage, Comprehensive Auto/Truck Policy, Fire Damage, Medical Expense and Liquor Liability, 5) The insurance companies issuing the policy or policies shall have no recourse against the Landlord for payment of any premiums or for assessments under any form of policy, and 6) Any such insurance policy may be written in combination with any of the other, where legally permitted, but none of the specified limits may be lowered thereby.

- D. **Certificate of Insurance.** Tenant shall furnish the Landlord with a certificate of such policy or policies of insurance, validly executed by or on behalf of the insurance company, certifying that such insurance is in full force and effect, and specifically insuring the liability assumed by Tenant with a requirement of thirty (30) days prior notice to the Landlord of any material change or cancellation thereof. Insurers shall have no right of recovery or subrogation against the Landlord, it being the intent of the parties that insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance. A lapse in insurance coverage will, at the sole discretion of Tenant, be deemed sufficient cause for the termination of the lease for cause upon written notice to Landlord provided, however, that Tenant shall have seven (7) days within which to cure unless there has been an uninsured loss within the period after the lapse.
- E. **Landlord Liability.** Landlord assumes no responsibility for any property placed in or on the Premises or any part thereof, and Landlord is hereby expressly released and discharged from any and all liability from any loss, injury or damage to persons or properties that may be sustained by reason of the occupancy of said Premises under this Agreement, except that caused by the gross negligence or willful misconduct of the Landlord, its agents, employees or contractors. The indemnification section of this lease shall apply to any claims asserting such liability against the Landlord.

ARTICLE 10

Mutual Waiver of Subrogation

Each policy of fire insurance with extended coverage and liability insurance carried by Landlord or Tenant shall provide that the insurer waives any right of subrogation against the other in connection with or arising out of any damage to such property contained in the Premises caused by fire or other risks or casualty covered by such insurance.

In the event that a waiver of subrogation endorsement is obtainable only at an additional expense, then the party so requiring such waiver of subrogation endorsement shall either pay the cost of the additional premium for such provisions, or the other party shall be relieved of its obligation to obtain such endorsement.

Neither party, nor its agents, employees or guests, shall be liable to the other for loss or damage caused by any risk covered by such insurance provided such policies shall be obtainable. This release shall extend to the benefit of any subtenant and the agents, employees, and guests of any such subtenant.

ARTICLE 11

Utility Charges and Responsibility

Tenant shall be solely responsible for and promptly pay all charges for water, gas, electricity, heat, or any other utility separately metered and used or consumed in the Premises. The Tenant is responsible for operation and maintenance of the heating, ventilation and air conditioning systems, if any, that solely serve the Premises, reasonable wear and tear and damage by casualty excepted. The heat, light, gas, electricity and water for the Premises shall be separately metered in an account standing in the name of the Tenant. Landlord agrees that within a reasonable period of time, after written notice from Tenant, Landlord shall make all necessary repairs expeditiously to all other HVAC, plumbing and electrical systems.

Any necessary utility upgrades, relocation of service or service lines are the sole responsibility of the Tenant and are at the sole cost of the Tenant.

ARTICLE 12

Assignment/Subletting

Tenant may not assign or sublet all or any of its interest in this Lease or in the Premises without the express written approval of the Landlord. No permitted assignment or subletting of Tenant's interest in this Lease shall relieve Tenant of its obligation to pay rent and to perform all of the other obligations to be performed by Tenant hereunder. Tenant is the primary obligor and any assignees or sublettees shall continue to remain jointly and severally liable for Tenant's obligations hereunder.

Upon any subletting by Tenant, Tenant shall pay to Landlord, as and when received, eighty percent (80%) of all sums (exclusive of those amounts representing a pro-rata share of Real Estate Taxes and insurance premiums allocable to the sublet premises, based on square footage) received by Tenant from such subtenant or any such subletting in excess of the pro-rata share of Fixed Rent allocable to the sublet portion of the Premises, based on square footage, net of Tenant's direct sublet costs including but not limited to reasonable brokerage commissions and reasonable attorney's fees.

ARTICLE 13

Governmental Regulations

Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all County, Municipal, State, Federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to its use of said Premises including all requirements of the Licensing Board of the City of New Bedford, the Federal Aviation Administration (FAA) and the United States Department of Transportation (DOT). Landlord makes no representation of warranties relating to use of the Premises relative to FAA or DOT line of site or 14 CFR part 77 requirements.

ARTICLE 14

Eminent Domain

If the whole of the Premises shall be acquired or condemned by Eminent Domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate when the Premises are physically taken.

Tenant shall have the further right to receive any relocation damages afforded Tenants under the Eminent Domain laws of the state in which the Premises are located as well as the right to receive compensation or damages for inventory, signs, machinery, equipment, fixtures, and all alterations not replacing Landlord's original equipment. Provided, however, that Tenant shall waive all other damages which shall diminish Landlord's right to recover for its leasehold interest.

ARTICLE 15

Default of Tenant

Tenant shall not be held in default of any term or provision of this Lease unless:

(a) Tenant shall have failed to pay any rental due hereunder within thirty (30) days of said payment being due, or

(b) unless Tenant shall have failed to undertake and reasonably pursue a cure of any other such default within thirty (30) days after receipt of written notice from Landlord, or

(c) Tenant shall have failed to bond or discharge any petition in bankruptcy, execution on its property, or assignment for the benefit of creditors within thirty (30) days after receipt of notice thereof.

In the event of such default, after thirty (30) days written notice to Tenant, and Tenant's failure to cure such default to the reasonable satisfaction of Landlord, Landlord may declare the

Term of Lease terminated, enter into possession of said Premises and sue for and recover all rents as they come due, or Landlord may sue and recover without entering into possession of said Premises. Landlord, further, shall have all rights granted to it under the laws of the Commonwealth of Massachusetts including reimbursement for reasonable attorney's fees.

ARTICLE 16

Destruction of Premises

In the event of damages to the Premises, rent and all occupancy charges shall not abate wholly or proportionately, as the case may be, during any period of untenability and Landlord shall not be required to restore the Premises.

ARTICLE 17

Access to Landlord

Landlord or Landlord's agent shall, with reasonable notice (not to be less than 24 hours) to Tenant except in the case of an emergency, have the right to enter the Premises at reasonable times to examine same, and to make such repairs, alterations, improvements or additions as Landlord may deem necessary or desirable, provided such entry or repairs shall not unreasonably interfere with Tenant's occupancy of, or business in the Premises.

ARTICLE 18

Force Majeure

If either party shall be delayed or hindered in or prevented from the performance of any act required hereunder, including delivery of Tenant's Premises by Landlord as required in Article 3 hereof, by reason of strikes, lockouts, labor trouble, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of like nature not the fault of the party delayed, then performance of such act shall be excluded for the period of the delay and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Article shall not operate or excuse the Tenant from the prompt payment of rent, or additional rent or any other payments required by the terms of this Lease.

ARTICLE 19

Rent

Monthly installments of rent (the "Rent") shall be payable, in advance, on the first day of each and every calendar month during the Term of this Lease, without notice or demand and without any set-off or deduction except to the extent otherwise expressly provided for in this Lease. Should this Lease commence on other than the first day of a calendar month or end on other than the last day of a calendar month, the monthly installment of Rent for any such partial calendar month shall be prorated and paid in advance. All Rent due or to become due hereunder shall be paid to Landlord at its address first above written, unless Landlord shall designate some other payee or address for the payment thereof by giving written notice to that effect to Tenant. The Rent may be paid in advance on the anniversary of the effective date for the full amount of the annual rent each year of the lease, at Tenant's sole option. Landlord shall have the right to charge interest on any payment which is thirty (30) days overdue, said interest not to exceed 18% per annum.

The Rent for the first two years of the lease shall be as follows:

Year 1	\$45,000.00
Year 2	\$47,100.00

In the event the Tenant exercises its option to renew for a second additional two years the Rent for lease years 3 through 4 shall be as follows:

Year 3	\$47,250.00
Year 4	\$50,250.00

In the event the Tenant exercises its option to renew for a third additional two-year term the Rent for lease years 5 through 6 shall be as follows:

Year 5	\$52,250.00
Year 6	\$53,500.00

In the event the Tenant exercises its option to renew for a fourth additional two-year term the Rent for lease years 7 through 8 shall be as follows:

Year 7	\$54,500.00
Year 8	\$55,500.00

In the event the Tenant exercises its option to renew for a fifth additional two-year term the Rent for lease years 9 through 10 shall be as follows:

Year 9	\$56,500.00
Year 10	\$57,500.00

ARTICLE 20

Notices

All notices required to be sent under the provisions of this Lease to Landlord and Tenant by one another shall be in writing and sent by U.S. mail, certified, return receipt requested, to the addresses set forth on the first page of this lease. Alternatively, notices may be delivered by hand delivery provided a written receipt is obtained.

ARTICLE 21

Emergency

Landlord may, if an emergency shall exist, perform any obligation of Tenant hereunder for the account of Tenant after first notifying the Tenant of the same by telephone or telefax of such emergency. In such event, Landlord shall request Tenant to reimburse Landlord for any reasonable expenditure made by Landlord. If Tenant fails to reimburse Landlord within thirty (30) days after Landlord's request therefore, Landlord may treat such failure to reimburse as a failure to pay rent hereunder, unless Tenant disputes the reasonableness of such expenditure in writing. In the event that Tenant so disputes the reasonableness of said expenditures by Landlord, Tenant shall tender the to the Landlord the full amount requested by Landlord and the Tenant may then submit the matter to binding arbitration before an Arbitrator selected by agreement of the parties. In the event that the parties cannot agree on an arbitrator to arbitrate the matter, then the matter shall be submitted to the American Arbitration Association for arbitration in accord with its commercial arbitration rules then in effect. If the Tenant prevails at arbitration, the Landlord shall return the funds to the Tenant along with interest thereon, computed at the then quoted Prime rate as reported in the Wall Street Journal or equivalent publication plus 200 basis points, and reimbursement of Tenant arbitration costs. If the Landlord prevails at arbitration, the Tenant shall tender to the Landlord the Landlord's arbitration costs.

ARTICLE 22

Successors and Assigns

This Lease shall be binding upon and shall inure into the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

ARTICLE 23

Taxes

A payment will be made by Tenant in lieu of real estate ad valorem taxes, payable to the City of New Bedford, to be placed in the General Fund. The payment in lieu of taxes will be

estimated each year by the Assessor, and may increase or decrease, but will be based on the tax burden as though the Premises were privately, versus municipally, owned.

ARTICLE 24

Tenant Cancellation

In the event that the Tenant shall cancel this lease for any reason permitted hereunder, then the Landlord shall retain all rents paid by the Tenant up to the time of the notice of cancellation. The Landlord shall be under no obligation to refund any portion of any rent payment received by the Landlord prior to notice of the cancellation.

ARTICLE 25

Discrimination

It is understood and agreed that it shall be a material breach of this lease for the Tenant to engage in any practice which shall violate any provision of Massachusetts General Laws, Ch. 151B, relative to discrimination in hiring, discharge, compensation, or terms, conditions or privileges of employment because of race, color, religious creed, national origin, sex, handicap, age or ancestry.

The Tenant agrees to comply with all applicable Federal and state statutes, rules and regulations prohibiting discrimination in employment including: Title VII of the Civil Rights Acts of 1964; the Age Discrimination in Employment Act of 1973; Massachusetts General Laws Chapter 151B Section 4 (1) and all relevant administrative orders and executive orders.

In the event the Tenant breaches the terms of this Article and fails to cure any such breach within 30 days of notice of the breach, Tenant shall be in default and the Landlord may cancel, terminate or suspend the lease in whole or in part for any violation of this paragraph.

ARTICLE 26

Parking

Tenant has the sole right to the use of fifteen (15) reserved parking spaces located west of the Premises. The Tenant is responsible for any costs associated with said parking spaces including, but without limitation, marking, signage and Snow removal. These parking spaces are shown on Exhibit 3 attached hereto.

In the event the Tenant wishes to lease additional space from the airport for its employees or customers. It may negotiate the use, number of spaces, and fees for such additional parking with the Landlord, which may or may not agree to provide the additional spaces.

ARTICLE 27

Liquor License

There is currently a liquor license available for the site authorized by special legislation which will be made available for Tenant's use subject to the Tenant's establishment of qualification to manage the license. Tenant understands and agrees that any liquor license issued by the New Bedford Licensing Board and/or the Alcoholic Beverages Commission of the Commonwealth of Massachusetts for the dispensing of alcoholic beverages on the Premises shall be a non-transferable by Tenant site specific license issued to the Landlord, which shall be subject to the terms and conditions of this lease.

ARTICLE 28

Entertainment

Tenant may have live music or entertainment subject to any licensing requirements, provided that, in the reasonable discretion of Airport Manager or Airport Manager's designee, the live music or entertainment does not interfere with the use and operation of the Airport or the quiet enjoyment by other Airport Tenants or Airport neighbors of their premises.

ARTICLE 29

Prohibited Acts

The following acts shall constitute a default pursuant to article 15 of this lease:

1. Permitting alcoholic beverages outside the defined limits the licensed area, as defined by the New Bedford Licensing Board and/or the Alcoholic Beverages Commission of the Commonwealth of Massachusetts.
2. Use of vending machines on the premises.
3. Creation of a nuisance by Tenant or Tenant permitting the creation or allowing to continue a nuisance by any employee, invitee, customer or business guest.
4. Cause, whether intentional or not, any interference with aircraft lighting and/or navigational aids.

ARTICLE 30

Actions or Requirements of the United States Department of Homeland Security, United States Transportation Safety Administration (TSA), the Federal Aviation Administration, or the Massachusetts Aeronautics Commission.

The parties acknowledge that the facility is a transportation facility and that certain governmental agencies have power and authority to supercede certain conditions and obligations contained in this Lease.

Should any government agency create conditions and obligations not in effect as of the Commencement Date of this Lease that materially interferes with the Permitted Use of the Premises, Tenant may terminate this Lease upon thirty (30) days written notice to Landlord.

ARTICLE 31

Noise and Other Environmental Facts

Tenant acknowledges that the Premises are located on an active airport and as such subject to aircraft noise, vibration, exhaust and overflights. The Tenant is barred from advancing any claim against the Landlord based in whole or in part on aircraft noise, vibration, exhaust or overflights. Tenant agrees to abide by all noise restriction policies and procedures adopted by the Landlord, provided such policies and procedures are equally enforced with other lessees within the Building. Tenant agrees to cooperate with the Landlord's noise abatement procedures in effect or hereinafter promulgated and implemented uniformly between all Airport businesses located within the Building.

ARTICLE 32

INTENTIONALLY DELETED

ARTICLE 33

INTENTIONALLY DELETED

ARTICLE 34

TENANT'S PROPERTY

All facilities, fixtures and improvements affixed to the Premises by Tenant as permitted by this Agreement shall, at the termination of this Lease, become the property of Landlord, as same or

any part thereof may be completed. It is expressly understood and agreed that all non-fixture equipment, furnishings, and personal property purchased by Tenant to supplement equipment, furnishings and personal property owned by Landlord, shall at all times remain the property of Tenant.

Notwithstanding anything to the contrary in this Lease, all items identified on the inventory list attached as Exhibit 5 shall remain the property of the Tenant, as it may be updated from time to time. Furthermore, notwithstanding anything to the contrary in this Lease the Tenant agrees that any HVAC system, stove hood, fire suppression system, doors, walls, countertops, bar, circuit breaker panel, circuit breakers and/or any roof mounted exhaust systems installed by Tenant at the premises during the term of this lease shall be considered "fixtures" and shall become the property of the Landlord even if paid for and installed by the Tenant.

ARTICLE 35

Additional Improvements, Utilities Extension Costs

Utility – Additional Construction, Relocation, and Extension – If the Landlord is hereinafter requested by Tenant in writing to construct, relocate or extend any utilities, streets or improvements that benefit the Tenant, then the Tenant agrees to pay, at its sole cost and expense, the cost of such construction, relocation, or extension. This section shall not obligate the Landlord to approve such improvements not deemed reasonable, cost effective, or which are deemed by the Landlord contrary to planned airport development.

ARTICLE 36

Lease, Expiration/Termination

Removal of Property – Upon termination of the leasehold estate whether by expiration of Term or otherwise, Landlord or its assignee shall have the option to purchase Tenant's equipment and furniture as identified in the inventory list attached as Exhibit 5 as it may be updated from time to time (Landlord's "Option to Purchase"). To exercise the Option to Purchase, Landlord must provide written notice to Tenant not earlier than thirty (30) days prior to termination of Tenant's leasehold estate, whether by expiration of Term or otherwise. The value of the items to be purchased by Landlord or its assignee shall be determined in the following manner: The Landlord or its assignee shall select one appraiser and the Tenant shall select one appraiser; these two appraisers shall together select a third appraiser. The three appraisers so appointed shall appraise the items to be purchased and the decision of any two of three appraisers so selected shall be final and binding upon the parties. The selected appraisers shall take into account the intrinsic value of the equipment as installed and shall consider its value in place to the next operator of a restaurant on the Premises.

In the event that Landlord does not notify Tenant of its desire to exercise its Option to Purchase within the timeframe outlined herein, then Tenant shall have the right to remove its equipment,

furniture, and other personal property which was installed and placed in and upon the Premises as identified in the inventory list attached as Exhibit 5 as it may be updated from time to time. Tenant shall not remove personal property owned by the Landlord. Tenant shall leave the Premises in a broom clean condition.

Abandonment of Property – Unless otherwise agreed, if TENANT does not within thirty (30) days of the expiration or earlier termination of this Agreement remove from said Leased Premises its furniture, equipment, and any other items of personal property, then such property shall be deemed abandoned by TENANT. The reasonable cost to the LANDLORD of removing such personal property shall become the responsibility of the TENANT. Despite any termination of the leasehold estate, TENANT shall have the right to enter the Leased Premises at reasonable times during such thirty (30) day period to accomplish such removal. In the event that the TENANT fails to remove its personal property at the expiration or earlier termination of this Agreement and elects to enter the Leased Premises at reasonable times during the thirty (30) day period subsequent to the expiration or earlier termination of this Agreement, then the TENANT shall tender to the LANDLORD as reasonable use and occupancy a sum of money equivalent to an additional thirty (30) days rent.

ARTICLE 37

Severability

Severability – In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either Landlord or Tenant in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Lease.

ARTICLE 38

Venue and Governing Laws

This Lease shall not be modified except by an instrument in writing executed by the parties hereto, and this Lease shall supersede all prior memoranda or other writings with respect to the subject matter contained herein. This Agreement and the rights and obligations of the parties thereunder shall in all respects be governed by, and construed and enforced in accordance with, the internal laws of the Commonwealth of Massachusetts, without regard to conflict of laws principles.

ARTICLE 39

COMMON AREAS AND COMMON AREA MAINTENANCE

The term "Common Areas" means the portions of the lot or Building as herein described which have been designated and improved for common use by or for the benefit of more than one occupant of same including, without limitation (if and to the extent facilities therefore exist at the time in question): the land and facilities utilized for or as parking lots; access and perimeter roads; truck passageways and loading platforms; service corridors; mechanical rooms for equipment servicing more than one occupant space; landscaped and grass areas; exterior lawn sprinklers, walks, elevators, stairways, ramps; interior corridors and stairs; directory equipment; storm and sanitary septic/sewer as applicable; entrance lobbies shared by more than one occupant; utility lines and the like installed in or for the benefit of Common Areas or for the benefit of more than one occupant (except to the extent same are the responsibility of the utility therefore); and the structure of the Building and all component and structural parts and systems of same including but not limited to the roof, mechanical systems, load bearing walls, floors and all other structural components.

Landlord reserves the right at any time and from time to time (i) to change or alter the location, layout, nature or arrangement of the Common Areas or any portion thereof, and (ii) to construct additional improvements on the property and make alterations thereof or additions thereto and build additional stories on or in any such buildings or build adjoining same; provided however, that no such change or alteration shall unreasonably interfere with the conduct of Tenant's business on the Premises, materially interfere with Tenant and Tenant's clients of access to the Premises, materially impair the visibility of the Premises or change the square footage of the Premises. Landlord shall have the right to close temporarily all or any portion of the Common Areas to such extent as may, in the reasonable opinion of Landlord, be necessary to prevent a dedication thereof to the public, provided that Tenant and Tenant's clients are not thereby denied access to the Premises, or for repairs, replacements or maintenance to the Common Area, provided such repairs, replacements, or maintenance are performed expeditiously and in such a manner as not to deprive Tenant and Tenant's clients access to the Premises.

Landlord, at Landlord's sole cost and expense, shall maintain the Common Areas in and serviceable and clean condition and shall make all necessary repairs and replacements to the roof, exterior walls and all structural repairs, repairs to Common Areas, parking lot and roadways, and repairs to HVAC, plumbing and electrical systems.

ARTICLE 40

ALTERATIONS AND IMPROVEMENTS BY TENANT

During the Term of this Lease, Tenant shall have the right, at its own cost and expense, following written notice to Landlord to make such non-structural, decorative alterations and improvements to the interior of the Premises as it shall deem expedient or necessary for its

business purposes and further provided that such non-structural alterations and improvements shall not change the footprint of the Building nor impair the value of the Building or its structural strength. All other alterations or improvements which Tenant desires to make in, on or to the Premises during the Term of this Lease shall require Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. All such work shall be done in a good and workmanlike manner, at Tenant's sole cost and expense, and subject to and in accordance with all applicable laws, rules, regulations and other requirements of all governmental authorities having jurisdiction thereof. Landlord shall execute and deliver upon request of Tenant such instrument or instruments embodying the approval of Landlord which may be required by any public or quasi-public authority for the purpose of obtaining any license or permit for the making of such alterations or improvements, Tenant agreeing to pay for such license or permit. If any of the Common Areas or any of said structural components are damaged by acts or due to the negligence of the Tenant, its officers, employees, invitees or guests, Tenant shall repair same. If, during the Term of this Lease, Tenant makes any alteration or improvement to the Premises, or installs any equipment or fixture on or in the Premises, which, in either case, causes a penetration to be made in or through the roof, such penetration shall be performed by a contractor reasonably acceptable to the entity bonding or providing a warranty on the roof so that such penetration would be performed in such a fashion that the roof bond or warranty would not be voided. If the roof bond or warranty has expired or is no longer in effect, such construction must be performed by contractors, and in a manner, reasonably acceptable to Landlord in order that the watertight condition of the roof be maintained.

Upon the expiration or termination of this Lease:

(i) Tenant shall not remove any of those improvements installed in, on or to the Premises pursuant to Article 40 hereof, which in the reasonable discretion of the Landlord are necessary or desirable for the efficient maintenance, use and/or operation of the Premises;

(ii) Tenant shall remove all of its machinery, equipment, personal property and trade fixtures, as identified in the inventory list attached as Exhibit 5, as updated from time to time;

(iii) Any and all damage to the Premises or any other portion of the Building caused by Tenant's installation and/or removal of any alterations, improvements or other property from the Premises or the Building as above required or permitted shall be promptly repaired by and at the expense of Tenant.

At no time, including during construction, shall Tenant commit any nuisance on the Premises, nor shall Tenant unreasonably interfere with other Airport Tenants. Tenant shall use its commercially reasonable effort to ensure that noise and odors do not escape the Premises. Any improvements or renovations performed by, or on behalf of Tenant shall be performed in compliance with applicable laws, ordinances and regulations and Tenant shall obtain all permits necessary to perform said improvements or renovation.

1. Workmanship – Tenant shall ensure that all labor and materials used for any and all repairs, improvements and renovations, performed by Tenant or Tenant's employees, agents or contractors shall be of First Class Quality (as hereinafter defined) and free from defects.
2. Construction Drawings and Records – As used herein, the term "First Class Quality" shall mean of the same quality as buildings used or to be used for the same or similar purposes already constructed on the Airport. Tenant agrees that it shall deliver to Landlord "as built" plans of the Tenant Facilities, including any and all changes thereto and shall, during the Term of this Agreement keep said plans current, showing therein any structural changes or modifications that may be made in or to the Premises or any other structural changes or modifications.
3. Construction Certification – Upon completion of the construction of all of the Work, Tenant shall provide Landlord with a copy of the Certificate of Occupancy issued by the City of New Bedford.
4. Structure Repair and Notice – Except as otherwise provided in this agreement, Landlord agrees that within a reasonable period of time, after written notice from Tenant, Landlord shall make all necessary exterior or structural repairs to the Premises, and the building of which the Premises is a part. Tenant shall make the necessary repairs to all wires, pipes, conduits and other heating and ventilating equipment or facilities for supplying heat, light, power, hot and cold water to the Premises and all outside drainage and waste pipes or facilities leading from the Premises, and those portions of all utility lines supplying the Premises which are located outside the Premises, unless such utility lines are maintained or repaired by utility companies.

Tenant shall be responsible for any interior repairs, including but not limited to the repair of any exposed pipes; any alterations or improvements involved in the renovation or alteration of the Premises; any interior repairs reasonably deemed by the Landlord to be unnecessary to maintain the Premises in a safe and tenantable condition; and any repairs or replacements caused in whole or in part by the negligence or intentional wrongful acts of Tenant, its employees, agents, contractors, or invitees. The Tenant is specifically required to make all repairs to windows, plate glass, doors and any fixtures or appurtenances composed of glass. Except for emergency situations, Tenant shall notify the Airport Manager prior to making any repairs. In the case of an emergency, Tenant shall notify the Airport Manager of the repair as soon as reasonably possible. Tenant shall provide and maintain the air conditioning system for the Leased Premises. Notwithstanding the foregoing, Tenant, at its sole expense, shall have the right, without prior approval of, but with written notice to, the Landlord to replace or repair floor and wall coverings to the Leased Premises.

ARTICLE 41

HOLDING OVER

In the event Tenant remains in possession of the Premises or any part thereof after the expiration of the Term of this Lease, it shall be deemed to be a Tenant from month to month only, at a monthly Fixed Rent equal to one hundred fifty (150%) percent of the monthly installment of Fixed Rent in effect during the last month of the Term expired, and governed in all other things, including, without limitation, the payment of other sums payable hereunder, except as to the duration of the Term, by the provisions of this Lease. Either party may terminate such tenancy by giving to the other at least thirty (30) days prior written notice of its intent to terminate.

ARTICLE 42

SURRENDER

At the expiration of the Term of this Lease, Tenant agrees to quit and surrender possession of the Premises to Landlord in as good condition as when delivered by Landlord, excepting ordinary wear and tear, damage by fire or other casualty, such condition resulting from condemnation or failure of Landlord to perform its obligations under this Lease, and such other condition as may be expressly permitted under this Lease.

ARTICLE 43

DOCTRINE OF INDEPENDENT COVENANTS

The doctrine of independent covenants applies in all matters relating to this Lease, including the obligation of Landlord to perform Landlord's obligations, duties, undertakings, covenants and agreements under this Lease, as well as the obligations of Tenant to pay Rent and to perform Tenant's other obligations, duties, undertakings, covenants and agreements under this Lease.

ARTICLE 44

INTENTIONALLY DELETED

ARTICLE 45

MISCELLANEOUS PROVISIONS

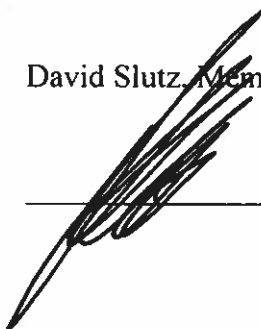
1. Landlord may, at Landlord's sole discretion, examine Tenant's management prepared. yearend financial statements.
2. Landlord's published Rules and Regulations and Leasing Policy shall be incorporated to this lease as Exhibit 6, subject to change from time to time by Landlord. Tenant agrees to be bound by these Rules and Regulations to the extent such rules and regulations are uniformly enforced.
3. The Tenant acknowledges the existence of a grease treatment system currently installed on the premised and agrees to maintain said system and pay the monthly charge for this system so long as the City of New Bedford Department of Public Infrastructure requires the system to be operational on the premises. Tenant will be billed directly for these monthly charges by the system vendor.
4. Tenant acknowledges that the placement of any structures on the roof of the premises is subject to FAA approval pursuant to an "Airspace Review" by the FAA and Tenant agrees to undertake any such review at its sole expense prior to placement of any structures on the roof of the premises.

THIS LEASE ENDS HERE. THE NEXT PAGE IS THE SIGNATURE PAGE

IN WITNESS HEREOF, the City of New Bedford has caused its corporate seal to be hereto affixed and these presents to be signed by Jonathan F. Mitchell its Mayor, Paul Barton, Chairman of the New Bedford Regional Airport Commission and on behalf of the Tenant, Airport Grille, LLC.

Airport Grille, LLC:

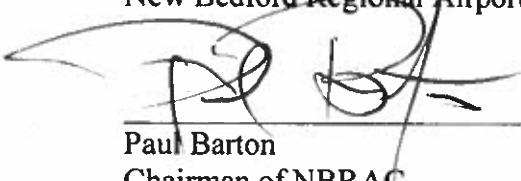
David Slutz, Member

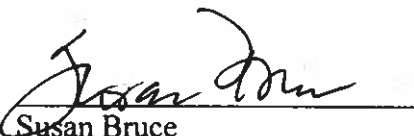


City of New Bedford

Jonathan F. Mitchell
Mayor

New Bedford Regional Airport Commission



Paul Barton
Chairman of NBRAC

Susan Bruce
Purchasing Agent

Ari Sky
CFO

Approved as to form and legality:



Eric Jaikes
Assistant City Solicitor

EXHIBIT 1

PLAN SHOWING PREMISES



EXHIBIT 2

MEMORANDUM OF LEASE COMMENCEMENT AND TERMINATION DATES

THIS MEMORANDUM is made and entered into as of _____ August 28, 2019 _____, 2019 by and between The New Bedford Regional Airport Commission, ("Landlord") and Airport Grille, LLC ("Tenant") with respect to that certain Lease between Landlord and Tenant dated _____ 8-28-2019 _____ ("Lease").

The term of the Lease commenced on _____, and that date shall be the "Commencement Date" under the Lease.

The Rent (as defined in the Lease) commenced on _____ October 1, 2019 _____, and that date shall be the "Rent Commencement Date" under the Lease.

The Term shall continue through _____, unless sooner terminated or extended pursuant to the Lease.

Landlord and Tenant agree that, if any date(s) in the paragraph next above differ from the equivalent date(s) set forth in the Lease, the Lease is hereby amended in all lease provisions where it would be logical to make change(s) if the date(s) in the paragraph next above had been the date(s) originally set forth in Section 3 of the Lease. Tenant accepts the Premises in their current "as is" condition.

IN WITNESS WHEREOF, Landlord and Tenant have executed this document as of the first date set forth in the first paragraph above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

TENANT:
Airport Grille, LLC

By _____

Name: _____

As Its: _____

LANDLORD:
New Bedford Regional Airport Commission

By: _____

By: _____

EXHIBIT 3

PLAN SHOWING RESTAURANT DEDICATED PARKING SPACES

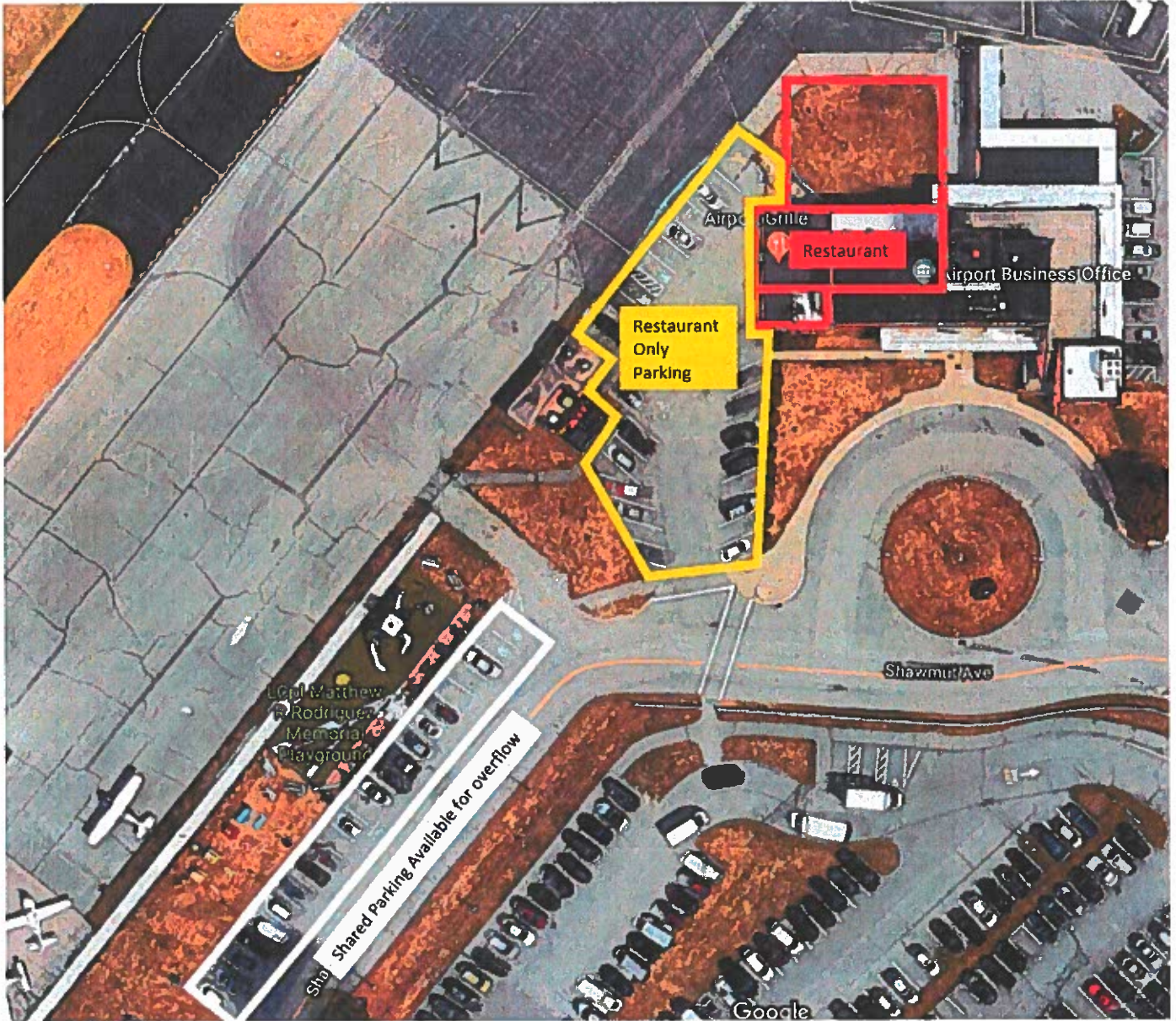


EXHIBIT 4

PLAN SHOWING "AIRPORT PARKING LOT"

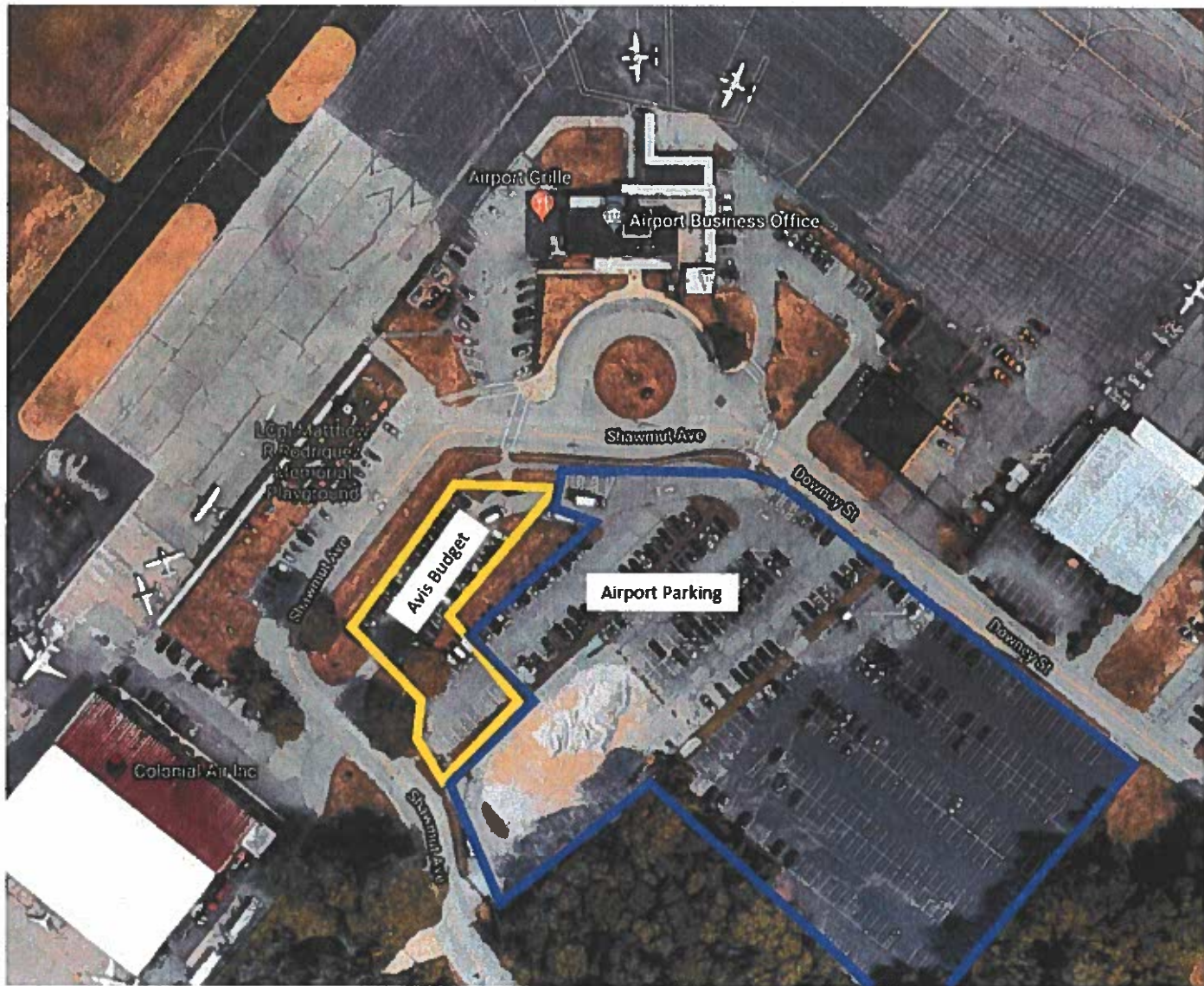


EXHIBIT 5

LIST OF EQUIPMENT AND PROPERTY INVENTORY AND DESIGNATION OF OWNERSHIP

Appliance Inventory

Thursday, June 20, 2019, 4:57 P

General Location: SEE NOTES

Address:

Contact:

Phone:

Appliance Number: Beer Tap Chiller

Type: Chiller
Manufacturer: Tecumseh
Model: AJA4492YXA
Serial #: 04G301331

Refrigerant: R-134A
Capacity:
Charge: 1 lbs 0.00 ozs
Duty Type: Small Appliance (5 Lbs. and less)
Unit Status:

Horsepower:
Lubricant:
Volt/Ph/Hz: 115/1/60
Certification: I
Installation Date:

Location:
Method Used to Determine Charge:

Upgrades

No Upgrades have been performed

Notes

Appliance Number: Boiler, Wall Hung

Type: Boiler, Condensing
Manufacturer: HTP
Model: UFT-199
Serial #: 011917sa900065

Refrigerant: N/A
Capacity: 199,000.00 BTU
Charge: 0 lbs 0.00 ozs
Duty Type:
Unit Status:

Horsepower:
Lubricant:
Volt/Ph/Hz: //
Certification:
Installation Date: 01/22/2018

Location:
Method Used to Determine Charge:

Upgrades

No Upgrades have been performed

Notes

Stainless Steel, wall hung, gas

Appliance Inventory

Thursday, June 28, 2018, 4:57 PM

General Location: SEE NOTES

Address:

Contact:

Phone:

Appliance Number: Chiller, Bar Top

Type: Chiller
Manufacturer: Trenton
Model: TEHA009E6-HS1B-0
Serial #: 002301097
Location:
Method Used to Determine Charge:

Refrigerant: R-404A
Capacity:
Charge:
Duty Type:
Unit Status:

Horsepower:
Lubricant:
Volt/Ph/Hz: 115/1/60
Certification:
Installation Date:

Upgrades

No Upgrades have been performed

Notes

Location: Root

Appliance Number: Cooler, 2-Door Glass

Type: Cooler, 2-door
Manufacturer: Beverage Air
Model: BB48GY
Serial #: 930330
Location:
Method Used to Determine Charge:

Refrigerant: R-134A
Capacity:
Charge: 0 lbs 9 00 ozs
Duty Type: Small Appliance (5 Lbs. and less)
Unit Status:

Horsepower:
Lubricant:
Volt/Ph/Hz: 115/1/60
Certification: I
Installation Date:

Upgrades

No Upgrades have been performed

Notes

Location: Kitchen

Appliance Inventory

Thursday, June 28, 2018, 4:57 PM

General Location: SEE NOTES

Address:

Contact:

Phone:

Appliance Number: Cooler, 2-Door Prep

Type: Cooler, 2-door
Manufacturer: Leader
Model: NSF 36 S/C
Serial #: UI100241
Location:
Method Used to Determine Charge:

Refrigerant: R-134A
Capacity:
Charge: 0 lbs 5 00 ozs
Duty Type: Small Appliance (5 Lbs. and less)
Unit Status:

Horsepower:
Lubricant:
Volt/Ph/Hz: 115/1/60
Certification: I
Installation Date:

Upgrades

No Upgrades have been performed

Notes

Location: Kitchen

Appliance Number: Cooler, 3-Door Prep

Type: Cooler, 4-Door
Manufacturer: True
Model: TSSU-72-18-HC
Serial #: 9513861
Location:
Method Used to Determine Charge:

Refrigerant: R-290
Capacity:
Charge: 0 lbs 4 00 ozs
Duty Type: Small Appliance (5 Lbs. and less)
Unit Status:

Horsepower:
Lubricant:
Volt/Ph/Hz: 115/1/60
Certification: I
Installation Date:

Upgrades

No Upgrades have been performed

Notes

Location: Kitchen

Appliance Inventory

Thursday, June 20, 2019, 4:57 PM

General Location: SEE NOTES

Address:

Contact:

Phone:

Appliance Number: Cooler, 2-Door Glass (Left)

Type: Cooler, 2-door
 Manufacturer: Beverage Air
 Model: BB48G
 Serial #: 9107822
 Location:
 Method Used to Determine Charge:

Refrigerant: R-134A
 Capacity:
 Charge: 0 lbs 8.00 ozs
 Duty Type: Small Appliance (5 Lbs. and less)
 Unit Status:

Horsepower:
 Lubricant:
 Volt/Ph/Hz: 115/1/60
 Certification: I
 Installation Date:

Upgrades

No Upgrades have been performed

Notes

Location: Behind Bar, Left Side

Appliance Number: Cooler, 2-Door Glass (Right)

Type: Cooler, 2-door
 Manufacturer: Beverage Air
 Model: BB48G
 Serial #: 9107818
 Location:
 Method Used to Determine Charge:

Refrigerant: R-134A
 Capacity:
 Charge: 0 lbs 8.00 ozs
 Duty Type: Small Appliance (5 Lbs. and less)
 Unit Status:

Horsepower:
 Lubricant:
 Volt/Ph/Hz: 115/1/60
 Certification: I
 Installation Date:

Upgrades

No Upgrades have been performed

Notes

Location: Behind Bar, Right Side Unit

Appliance Inventory

Thursday, June 10, 2019, 4:57 PM

General Location: SEE NOTES

Address:

Contact:

Phone:

Appliance Number: Cooler, Reach-In

Type: Cooler, Reach-In
 Manufacturer: True
 Model: TUC 27F-HC
 Serial #: 9507523
 Location:
 Method Used to Determine Charge:

Refrigerant: R-290
 Capacity:
 Charge: 0 lbs 2.30 ozs
 Duty Type: Small Appliance (5 Lbs. and less)
 Unit Status:

Horsepower:
 Lubricant:
 Volt/Ph/Hz: 115/1/60
 Certification: I
 Installation Date:

Upgrades

No Upgrades have been performed

Notes

Location: Kitchen

Appliance Number: Cooler, Walk-In

Type: Walk In Cooler
 Manufacturer: Copeland
 Model: F3A2-B151-CPV
 Serial #: 09F20716U
 Location:
 Method Used to Determine Charge:

Refrigerant: R-22
 Capacity:
 Charge:
 Duty Type:
 Unit Status:

Horsepower:
 Lubricant:
 Volt/Ph/Hz: 208/230/1/60
 Certification:
 Installation Date:

Upgrades

No Upgrades have been performed

Notes

Condenser on roof

Evaporator Coil
 Norlake
 Model: SA28-1228-AE
 Serial: E09E47271301003
 115v, 1ph, 60hz

Appliance Inventory

Thursday, June 20, 2019, 4:57 PM

General Location: SEE NOTES

Address:

Contact:

Phone:

Appliance Number: Ductless Split - Kitchen

Type: Ductless Split
 Manufacturer: Fujitsu
 Model: AOU36CLX
 Serial #: FBIVD14889
 Location:
 Method Used to Determine Charge:

Refrigerant: R-410A
 Capacity: 3.00 Tons
 Charge: 4 lbs 10.00 ozs
 Duty Type: Small Appliance (5 Lbs. and less)
 Unit Status:

Horsepower:
 Lubricant:
 Volt/Ph/Hz: 208/230/1/60
 Certification: 1
 Installation Date:

Upgrades

No Upgrades have been performed

Notes

Condenser in front of building on ground
 Area Served: Kitchen

Air Handler
 Fujitsu
 Model: ASU36CLX
 EBA014505
 208/230v, 1ph, 60hz

Appliance Number: Freezer, Chest

Type: Freezer, Chest
 Manufacturer: Beverage Air
 Model: GF24L
 Serial #: 2930922603
 Location:
 Method Used to Determine Charge:

Refrigerant: R-404A
 Capacity:
 Charge: 0 lbs 5.50 ozs
 Duty Type: Small Appliance (5 Lbs. and less)
 Unit Status:

Horsepower:
 Lubricant:
 Volt/Ph/Hz: 115/1/60
 Certification: 1
 Installation Date:

Upgrades

No Upgrades have been performed

Notes

Location: Kitchen

Appliance Inventory

Thursday, June 20, 2019, 4:57 PM

General Location: SEE NOTES

Address:

Contact:

Phone:

Appliance Number: Freezer, Reach-In

Type: Freezer, Reach-in
 Manufacturer: True
 Model: T-49F
 Serial #: 1-4736986
 Location:
 Method Used to Determine Charge:

Refrigerant: R-404A
 Capacity:
 Charge: 1 lbs 8.00 ozs
 Duty Type: Small Appliance (5 Lbs. and less)
 Unit Status:

Horsepower:
 Lubricant:
 Volt/Ph/Hz: 115/1/60
 Certification: 1
 Installation Date:

Upgrades

No Upgrades have been performed

Notes

Location: Kitchen

Appliance Number: Glass Chiller

Type: Freezer
 Manufacturer: Beverage Air
 Model: GF34L
 Serial #: 9011005
 Location:
 Method Used to Determine Charge:

Refrigerant: R-404A
 Capacity:
 Charge: 0 lbs 8.50 ozs
 Duty Type: Small Appliance (5 Lbs. and less)
 Unit Status:

Horsepower:
 Lubricant:
 Volt/Ph/Hz: 115/1/60
 Certification: 1
 Installation Date:

Upgrades

No Upgrades have been performed

Notes

Location: Behind Bar

Appliance Inventory

Thursday, June 10, 2010, 4:57 PM

General Location: SEE NOTES

Address:

Contact:

Phone:

Appliance Number: Ice Machine

Type: Ice Machine
Manufacturer: Hoshizaki
Model: KM-S01MAH
Serial #: V02766J

Refrigerant: R-404A
Capacity:
Charge: 2 lbs 15.00 ozs
Duty Type: Small Appliance (5 Lbs. and less)
Unit Status:

Horsepower:
Lubricant:
Volt/Ph/Hz: 208/230/1/60
Certification: I
Installation Date:

Location:
Method Used to Determine Charge:

Upgrades

No Upgrades have been performed

Notes

Water Filter: Manitowoc K00336

Appliance Number: Small Fridge

Type:
Manufacturer:
Model:
Serial #:
Location:
Method Used to Determine Charge:

Refrigerant: R-134A
Capacity:
Charge: 0 lbs 0.00 ozs
Duty Type:
Unit Status:

Horsepower:
Lubricant:
Volt/Ph/Hz: //
Certification:
Installation Date:

Upgrades

No Upgrades have been performed

Notes

Appliance Inventory

Thursday, June 10, 2010, 4:57 PM

General Location: SEE NOTES

Address:

Contact:

Phone:

Appliance Number: Split System - Dining Area

Type: Split System
Manufacturer: Whirlpool
Model: W2C360A-2A
Serial #: 4609F52846

Refrigerant: R-22
Capacity:
Charge: 11 lbs 12.00 ozs
Duty Type: Appliance 5 to 50 Lbs.
Unit Status:

Horsepower:
Lubricant:
Volt/Ph/Hz: 208/230/1/60
Certification: II
Installation Date:

Location:
Method Used to Determine Charge:

Upgrades

No Upgrades have been performed

Notes

Condenser on Roof
Area Served: Dining Room

Air Handler - Dining Area
First Company
Mod#: 80HDXB-HV
Ser#: 485577
115v, 1ph, 60hz

1 - 24x24x1 pleated

Appliance Inventory

Thursday, June 20, 2019, 4:57 PM

General Location: SEE NOTES

Address:

Contact:

Phone:

Appliance Number: Split System - Lounge Area

Type: Split System

Manufacturer: Whirlpool

Model: W2C360A-2A

Serial #: 4609F52845

Location:

Method Used to Determine Charge:

Upgrades

No Upgrades have been performed

Notes

Condenser on Roof
Area Served: Lounge Area

Air Handling Unit - Lounge Area
First Company
Model: 60MBXB-HW
Serial #: 699498
115v, 1ph, 60hz

Refrigerant: R-22

Capacity:

Charge: 11 lbs 12.00 ozs

Duty Type: Appliance 5 to 50 Lbs.

Unit Status:

Horsepower:

Lubricant:

Volt/Ph/Hz: 208/230/1/60

Certification: #

Installation Date:

1 - 24x24x1 pleated

Appliance Number: Walk-In Cooler

Type:

Manufacturer:

Model:

Serial #:

Location:

Method Used to Determine Charge:

Upgrades

No Upgrades have been performed

Notes

Refrigerant: Unknown

Capacity:

Charge: 0 lbs 0.00 ozs

Duty Type:

Unit Status:

Horsepower:

Lubricant:

Volt/Ph/Hz: #

Certification:

Installation Date:

EXHIBIT 6

AIRPORT RULES AND REGULATIONS LEASING POLICY



AIRPORT LEASING POLICY

1.0 GENERAL POLICY

In an attempt to promote and develop a fair and reasonable operating environment for all persons, firms, or organizations who enter into agreements with the City of New Bedford acting by and through its Airport Commission (hereinafter referred to as "Commission") to conduct a commercial operation on New Bedford Regional Airport (hereinafter referred to as "Airport") property, the following Lease and Operating Policy is hereby adopted. This policy is to be adhered to by all lessees, sub-lessees, operators, licensees and contractors.

The Commission hereby instructs New Bedford Airport Management to make reasonable efforts when negotiating Lease and Operating Agreements that directly support airport operations to administer appropriate public business standards for the airport and that said negotiations shall strive to result in agreements that:

1. Are standardized among those tenants in a particular category as identified in this document and are at comparable market rates at similar airports.
2. Permit maximum generation of revenues to the airport that maintains a satisfactory return for the lessees, which will support the enterprise fund.
3. Obligate the airport to an absolute minimum of operational costs in the leased areas.
4. Fulfill the long-term public service mission and goals inherent in the operation of public use airports.
5. Attract the investment of private and public capital to the development of the airport.

2.0 AGREEMENT CLASSIFICATIONS

The Commission will entertain at a minimum the following five classifications of agreements (sometimes collectively referred to as "Agreements"):

LEASE AGREEMENTS: (Land, Building, or Facility leases identified for a specific purpose on or off airport)

SUBLEASE AGREEMENTS: (Land, Building or Facility leases with airport tenants who sublease and maintain a valid agreement with the Commission on or off airport.)

LEASE & OPERATING AGREEMENTS: (Land, Building, and/or Facility leases that directly support airport operators, full FBO's or Fuel Farms)

OPERATING AGREEMENTS: (Agreements granting the privilege of conducting aviation related or airport supporting operations)

LICENSE AGREEMENTS AND/OR CONTRACTS (License agreements providing arrangements for special circumstances involving land, building, facility or business space on or off airport)

2.1 AGREEMENTS REQUIRED

No person, firm, or organization will be permitted to operate a business on the airport without an approved lease, sublease, or operating or license agreement with the Commission. This requirement protects the investment and privileges of bona fide operations on the airport and ensures fees or charges will be charged to every user of the airport.

2.2 STANDARDIZED AGREEMENTS

In order to ensure that each category of tenant/operator on the airport is governed by the same terms, conditions, and standards all tenants/operators within each category will be treated alike to the extent practical as determined by the Commission. Standardized leases for each category will be used by management as guidelines for negotiating all agreements. Typical categories that have or may develop at the Airport include but are not limited to:

Lease/License Agreement Categories

1. Full Service Fixed Base Operator (FBO)
2. Aircraft Maintenance, Overhaul, and Parts Shop
3. Specialized Commercial Flying Service
4. Specialized Aircraft Repair Service
5. Aircraft Hangar Storage Operations
6. Scheduled Passenger Air Carrier
7. Non-Scheduled Passenger Air Carrier (includes charter or occasional)
8. Cargo Air Carrier
9. Non-Aviation Land and or Building Lease
10. On Airport Car Rental Operations
11. Off Airport Car Rental Operations
12. Taxi Cab, Limousine, Bus Operations
13. Courtesy Vehicle Operations
14. Vending Machine Operations
15. Airport Brochure Display/Distribution Operations
16. Display Cabinet Operations

17. Advertising Signs On Airport
18. Advertising Signs Off Airport
19. Utility Easements
20. Automobile Parking
21. Food, Beverage, Merchandising Concessions
22. Governmental Leases
23. Aviation Easements
24. Operating Privilege Agreements
25. Flight Training or educational
26. Tie Down space agreements
27. Fuel delivery, storage, or sale agreements

2.3 LEASE/LICENSE AGREEMENTS - "Intentionally Omitted".

2.4 NON AVIATION BUSINESS

Any non aviation business must abide by the bidding process set forth in M.G.L.c. 40B.

3.0 GENERAL GUIDELINES FOR AIRPORT AGREEMENTS

The following guidelines as they pertain to their respective categories shall be used when airport management negotiates lease agreements. This policy is not at all inclusive and where unique circumstances exist, applications of professional airport leasing practices shall be applied on a case by case basis.

3.1 RATES AND CHARGES

Airport Management, in conjunction with the Airport Commission, shall review at a minimum, bi-annually (or as necessary) all rates, charges, and fees associated with the use of Airport Property. These include, but are not limited to Parking Fees, Landing Fees, Fuel Flowage Fees, and City Ramp Usage Fees. Any and all fee changes are subject to a majority vote by the Airport Commission at a regularly scheduled Airport Commission Meeting that is open to the General Public.

The principal underlying the establishment of rates and charges will be that each airport tenant and each user of the airfield pay an appropriate rate or fee for specific tenancy or use. The Commission will endeavor to recover the capital and operating costs of the airport and work towards self-sufficiency maintaining the highest level of public service, safety and security. Rates and charges shall be consistent with the annual "A" Rate Structure" and will be updated and approved by the Commission on an ongoing basis.

All Land and/or Building, Counter, and Office Space leases shall be reviewed at a minimum, bi-annually (or as necessary) and compared to market rates at other similarly-sized airports. On occasion, comparison may be conducted by the airport commission through an official appraiser in accordance with the appraisal section of this policy. Any and all changes are subject to a majority vote by the Airport Commission at a regularly scheduled Airport Commission Meeting that is open to the General Public.

In addition to annual CPI increases, leases shall reflect a rate adjustment every three to five years by market evaluation or in accordance with the appraisal section of this policy. Adjustments shall reflect the appraised market value or, CPI increase, or the current rental rate whichever is greater. Where new construction is proposed, financing is required, and the lending institution requires a longer term, the commission will consider amendments to the lease term.

3.2 TERM OF LEASE

Agreements will be of sufficient length to permit a tenant making substantial capital investment in the airport (Terminal building improvements, Building improvements, or Ground area improvements), to amortize the tenant's capital investment over a reasonable period of time.

Where the facilities are owned by the Commission the term of the lease shall be written in 5 year option renewals by the commission. Where new construction is proposed by a tenant, additional years may be permitted, but in no case shall the term exceed 30 years.

3.3 TITLE TO IMPROVEMENTS

Title to all fixed improvements constructed or installed on the leased premises by the lessee shall at all times during the term of the agreement remain with lessee unless otherwise authorized by the Commission. Upon termination, said improvements shall become the property of the Commission or at the Commission's sole option the airport may require the lessee to remove said improvements and restore the ground to its original condition at the cost of the Lessee.

3.4 MAINTENANCE

- Terminal building:** The Commission will provide structural maintenance, heat and light, (unless otherwise provided in tenant's lease/license Agreement), but will not provide janitorial service, relamping or other day to day service in any tenant's leased area unless compensated for such service.
- Airfield:** The Commission will maintain all public use runways, taxiways and aprons. Ramps and aprons leased to tenants will be maintained by tenants to the satisfaction of the Commission.
- Land and Building:** Tenants will be required to provide all maintenance of land and utility service to leased land and/or buildings. The Commission shall retain sole discretion as to the quality of maintenance and upon notice may require improved maintenance or cleaning/clearing of items deemed non-aviation related or unsightly where required. If such maintenance is not performed the Commission may perform such maintenance and invoice the cost of the maintenance to the tenant. Nonpayment of said invoice will be terms for lease cancellation.

3.5 ASSIGNMENT / SUBLETTING / SALE OF STOCK / SALE OF FACILITIES CONSTRUCTED

The operations of any tenant on the airport are to be in the Public interest and furtherance of airport activity. Tenants are entrusted with the duty and obligation of providing the public with the highest level of services and facilities, and it is therefore necessary that the tenant's operations be subject to continuing scrutiny by the Commission and that the tenant operate in a business-like fashion, efficiently and extending courtesy to the Public. For these reasons the following shall be required of any new tenants (those who enter into Agreements after the effective date of this policy):

- The Commission shall retain total control and sole discretion over any assignment or any method of changing or delivering to others any of the functions to be performed by the tenant, and any such assignment shall require the prior written approval by the Commission including licensed Airport Tie Down space.
- The tenant shall not have any right to sell, assign or transfer the lease without written approval of the Commission. Prior to any such sale, assignment or transfer the airport shall require the approval in writing of the managing officers and the chief executive officers of the tenant and no capital stock of the tenant can be assigned to any person or persons, firm or corporation, without the prior written consent and approval of the Commission. Further the Commission may require that the original owners of the corporation collectively own no less than fifty-one (51 %) financial interest in the assets of the tenant's corporation.
- The Commission may elect to retain the right to review and approve the manager who runs the day-to-day operations of the facilities under lease. In the event the Commission is dissatisfied with said manager's performance, the Commission shall notify the tenant and the tenant shall remedy any problems identified by the Commission, including but not limited to replacement of said manager with a new manager acceptable to and approved by the Commission.
- Tenant may sublease a part of the leased area to others only after submission of the information contained in Section 3.5 of this leasing policy and receiving written approval from the Commission. Anyone intending to enter into or transfer a lease to another party must submit a written request to appear before the Finance and Audit Committee at a scheduled public meeting and then requires a vote of the full commission. Prior to, such party must submit a minimum written explanation of the following:
 - Owner's Corporation and Resume
 - Proposed Business Plan (identify the type and intentions, the most recent financial statements and performance for cash flow consistent with term of renewal periods).
 - A minimum of 5 business references, one of which would be a letter of Bank relationship.

- The Airport Commission has the right to have a qualified person review financial statements.
- The Commission shall collect reasonable fees from tenants who lease land consistent with the "rate structure" for the assignment, sale or lease of stock, hangars, buildings and/or other facilities constructed on airport leased land.

3.6 PUBLIC SERVICE GOALS:

Minimum performance standards will be incorporated into leases in order to ensure the level of public service and safety and security is of the highest quality, which are consistent with the goals of the Commission. Remedy clauses will be included for inadequate performance, the quality of which shall be determined solely by the Commission.

3.7 ENCUMBRANCES

The Commission may permit the tenant to subordinate the leasehold owned improvements (NOT LAND) for financing purposes with a mortgage approved by the Commission. If such an arrangement is permitted the mortgagee may be granted the right to cure any default including the assumption of the lease. This encumbrance provision will assist private investment in financing capital improvements, protect the mortgagee's interest, and does not endanger the interest of the Commission.

3.8 INDEMNIFICATION AND INSURANCE

The Commission may from time to time retain the services of a risk management firm or expert to assign standardized limits, types and clauses concerning indemnification and insurance for each identified lease/operating category.

3.9 TAXES

Any federal, state, or local taxes not paid by the lessee shall be deemed sufficient cause for cancellation of any lease.

3.10 RULES AND REGULATIONS

Airport Rules and Regulations, Airport Certification Manual and the New Bedford Regional Airport's Security Plan shall be a part of all leases. A violation of any airport rule or regulation shall be deemed sufficient cause for cancellation of an Agreement.

3.11 APPRAISALS

Appraisals may be used for determining the Fair Market Value (FMV) of the highest and best use of land and/or facilities the airport rents out to others. The appraisal determination may be used as a minimum bid on any Request For Proposal (RFP) process the Commission entertains. Appraisals

shall be conducted by certified general appraisers. The Commission shall make the selection of the firm to conduct the work but may at its discretion seek reimbursement from the tenant of the appraised property. Once an appraisal is conducted for land and/or facilities the Commission may apply the appraisal on other similar land and/or facilities for up to three years at which time a new appraisal for that category of "similar" land and/or facilities would be required.

In lieu of appraisals the Commission may at its option apply airport industry standards for determining the fair market value of granting privileges and leasing land and/or facilities for aviation related or airport support agreements. However, all non-aviation use land leases shall be appraised in accordance with the above paragraph.

Where the building or other permanent fixtures of the appraised land is owned by the tenant and not being leased by the Commission to the tenant said building and fixtures shall not be included in the appraisal nor shall any encumbrances on said building or fixtures be included in the appraisal.

3.12 REQUEST FOR PROPOSAL

As a matter of policy the following categories of leases shall go through the Commission's competitive bid/proposal and shall be based on the best interest of the airport and not necessarily limited to dollar value.

- Non-Aviation Land Leases contracts or licenses and off airport property
- Car Rental Operations
- Taxi Cab Operations
- Vending Machine Operations
- Automobile Parking
- Food, Beverage, Merchandising, Concessions
- Any other category which the Commission votes to request proposals.

3.13 VARIANCE

Any variance or waiver from these policies shall require approval of the Commission. Said variance or waiver shall require the approval of at least a majority of Commissioners during one voting session.

3.14 PERFORMANCE BONDS

Each tenant may be required to provide the Commission a surety bond in a sum equal to at least one year's rental. Instead of a surety bond, the tenant may be permitted to deposit an amount equal to one year's rental. The requirement of a bond permits the Commission to recover damages in the event the tenant is in default. The bond or deposit serves in lieu of a lien by the Commission on the tenant's leasehold interest and is not objectionable from the standpoint of mortgage financing. In addition to rental deposits, construction performance bonds may be required.

3.15 RELOCATION OF IMPROVEMENTS

To protect the long term interest of the airport and tenants the Commission will maintain the right to relocate or replace a tenant's improvements at another location in the event property is required for developing or expansion purposes.

3.16 ZONING

All leases shall remain consistent with the Airport Master Plan, airport development standards, and land use plan of the airport.

3.17 FUEL DELIVERIES, STORAGE, AND DISTRIBUTION

1. All fuels (Aviation and Vehicles) delivered at the airport shall be assessed at the per gallon charge as specified in the Leasing Policy Rates and Charges.
2. All fuel delivery companies or sources of fuel must be registered with the Airport Administration Office.
3. A 24 hour advance notice to the Airport Administration Office must be faxed, mailed or e-mailed from the supplier prior to delivery of any fuel to the airport. The information shall indicate ETA (estimated time of arrival) and gallons to be delivered.
4. All fuel delivered to FBO's must be accompanied by an invoice or bill of lading indicating the time, date, gallons and other pertinent information.
5. When a FBO receives a fuel delivery, upon each and every delivery a copy of the bill of lading shall be sent to the Airport Administration Office within 12 hours of the delivery. If a tenant retrieves his/her own fuel using their own truck the same procedure applies. (1- 6)
6. Only FBO's of record can receive and supply fuel on the Airport. Other tenants or Aircraft owners are prohibited from bringing their own fuel to the airport.

3.18 NEW LEASE AND LICENSE FEES

The Commission will charge 2% directly to the Lessee for any new leases, license or contract agreements on or off the airport based on the total lease amount or value of the initial term of the lease, license or contract up to the time to exercise the 1st option to renew. (ex. 3 year or 5 year option/renewal)

4.0 OTHER LEASE PROVISIONS

This leasing policy does not include all of the provisions of airport leases. Other provisions including but not limited to the following may be included in airport agreements:

- Use and Privileges
- Obligations of Lessee
- Obligations of Lessor
- Leased Areas Maintenance
- Termination Concessions
- Excluded Vending Machines
- Trade Fixtures
- Government Inclusion
- Notices
- No liens
- Hazardous Substances Waivers
- Right to Develop Airport Headings
- Construction and Saving Improvements
- Quiet Enjoyment Arbitration

5.0 NEW BEDFORD REGIONAL AIRPORT 2019 RATE STRUCTURE

Landing Fees

<i>Exempt for aircraft under 5,500 lbs.</i>	\$2.50 per 1,000 lbs
<i>Based on Max Gross Takeoff Weight</i>	
<i>Exempt for Non-Commercial, Based Aircraft</i>	
<i>25% Discount for Commercial Aircraft based at EWB</i>	
<i>Paid directly to FBO</i>	

Monthly City Ramp Tie-Down

<i>Paid directly to Airport</i>	\$60.00 per month
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Aircraft City Ramp Parking Fees

<i>For any part of a Calendar Day</i>	\$8.00/ Single-Engine
<i>Charged Per Day</i>	\$15.00/ Multi-Engine (Under 9,000 lbs)
<i>Based on Max Gross Takeoff Weight</i>	\$30.00/ Multi-Engine (Over 9,000 lbs)
<i>Paid directly to FBO</i>	\$30.00/ Small Jet (Under 10,000 lbs)
	\$50.00/ Medium Jet (10,000 lbs–17,999 lbs)
	\$75.00/ Large Jet (18,000 lbs – 59,999 lbs)
	\$95.00/ Jumbo Jet (Over 60,000 lbs)

TSA Ticketing Counter Fee

<i>Paid directly to Airport</i>	\$2.00 per passenger
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Freight

<i>Paid directly to Airport</i>	\$0.05 per pound
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Fuel Flowage Fees <i>Paid directly to Airport</i>	100LL - \$0.08 per gallon \$0.10 per gallon	Jet A -
Security Gate Cards <i>T-Hungar Gate Initial & Replacement</i>	\$20.00 per card	
Airport Conference Room <i>Paid directly to Airport</i>	\$35.00 0-1 hour \$75.00 1-4 hours \$100.00 4-8 hours	
Terminal Information Racks <i>Paid directly to Airport</i>	\$100.00 per year Free Leaflets and Brochures \$100.00 per year Free Information Booklets with Advertisements \$100.00 per year Free Magazine and Newspapers with Advertisements	
Terminal Display Cabinets <i>Paid directly to Airport</i>	\$500.00 per year	
Advertising Fees <i>Paid directly to Airport</i>	\$50.00 per month for Terminal Building Signs \$50.00 per month for Road Signs	
Event Vendor Display <i>Paid directly to Airport</i>	\$100.00 per event	
FBO Rent	Based on operational lease rate plus normal FBO Fees and Charges Policy	
Aviation Land Rent	Current Airport Market Value	
Hangar Sale	Per P&S Agreement or Assessed Value whichever is greater	
Non-Aviation Land Rent	Current Market Value	
Security ID Cards	No Charge	

SIDA Badges

Fee determined by TSA & AAEE

Master Plan*Available on Airport Website*

No Charge

Assignment or Sale of Lease and/of Stock

A fee of \$1000.00 or 5% of the total dollar value of Sale and/or Stock of Lease and/or Stock whichever is greater

News Stand

Refer to Concession

6.0 ANNUAL CPI ESCALATION LANGUAGE**For Lease agreements that refer to CPI Escalation Only**

The rent shall be annually adjusted consistent with the 12 month percent change as indicated in the U.S. Department of Labor Bureau of Labor Statistics (the month prior to contract commencement date) report U. S. City average unadjusted annual Consumer Price Index Urban Wage Earners (CPI-U) 1982-84 base. Said annual adjustment shall be effective beginning (date contract commences) of every year throughout the term of this agreement and computed consistent with the attached CPI worksheet identified as exhibit "B" attached hereto and made a part hereof. Said annual adjustment shall reflect either the then current rental rate or above referenced CPI-U percent change whichever is greater. When major revisions to the structure of the reported CPI occur as reported by the U.S. Department of Labor Bureau of Labor Statistics including but not limited to a new base year, the lessor may at its sole option apply the new structure.

7.0 GROSS RECEIPTS LANGUAGE

The "gross receipts" as used herein shall be construed to mean, for all purposes hereof, the aggregate dollar amount of all sales made and services performed (whether for cash or credit, or other-wise) of every kind and nature, together with the aggregate dollar amount of all exchange goods, wares, merchandise, and services for all property and services, valued at the retail market price thereof, as if the same had been sold for cash or for the fair and reasonable value thereof, whichever is the greater, excluding only:

1. Refunds and discounts to customers which have been included in gross sales.
2. The amount of any sales, use and excise taxes levied upon retail sales where such tax has been charged to the customer.
3. Aircraft sales, fuel and oil sales.

8.0 ENFORCEMENT OF LEASING POLICY

Any violations or inconsistencies with the terms or conditions of this Leasing Policy will be cause for any Agreement with the New Bedford Regional Airport to be considered as being in default. A default may be cured within thirty (30) days after receiving such notice from the New Bedford Regional Airport.

Any late payment or non-payment of the leasing policy fees will be assessed at 18% per annum for any unpaid balance due after 14 days.

9.0 CONFLICTS BETWEEN AGREEMENT AND AIRPORT LEASING POLICY

In the event of any conflict between this Airport Leasing Policy and any Agreement entered into with the New Bedford Regional Airport the Agreement shall govern the relationship between the parties.

UPDATED AND AMENDED January 15, 2019

5.0 Rate Structure - Amended
3.1 Rates & Charges Authority - Amended
3.9 Taxes- Clarified
3.13 Variance- Clarified
3.17-5 revised, -7 removed
5.0 Rate Structure-
Building Rent- (Deleted)
Landing Fee- Added
Enplanement Fees – (Deleted)
GA Landing Fees- (Deleted)
City Ramp Tie Down - changed
FBO's with License Agreement-(Deleted)
Over Night Aircraft Parking Fees- changed
Sale of aircraft parts/ plane- changed

UPDATED AND AMENDED July 7, 2005

Parking Fees
City Tie Down Ramp Fees
Overnight Parking Fees
GA Landing Fees (Part 91)
Transient Visitor Parking
Ramp Operating Fees (Deleted)
General Policy 1.0
Agreement Classifications 2.0
Agreement Required 2.1
Standardized Agreements Amended and Additions 2.2
2.3 Lease/License Operating Agreements (Addition to Leasing Policy)
2.4 Non-Aviation Business (Addition to Leasing Policy)
Rates and Charges 3.1
Term of Lease 3.2
Title of Improvements 3.3
Maintenance 3.4
Assignment/Subletting/Sale of Stock/Sale of Facilities Constructed 3.5

Public Service Goals 3.6
Indemnification and Insurance 3.8
Rules and Regulations 3.10
Appraisals 3.11
Request for Proposal 3.12
3.17 (1-7) Fuel Deliveries, Storage, and Distribution (Addition to Leasing Policy) 3.18
Lease/Licenses Document Fee
UPDATED AND AMENDED: JULY 1, 2002
Parking Fees
UPDATED AND AMENDED: JULY 1, 2001 Parking Fees
UPDATED AND AMENDED: DECEMBER 10, 1996 Passenger Fees
Display Cabinets
Parking Revenue
ADOPTED: FEBRUARY 17, 1993



Item Title:

APPROPRIATION - SCHOOL DEPT. \$2,535,000.00

Item Detail:

M5. COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDER for the APPROPRIATION of \$2,535,000.00, from ORDINARY REVENUE and MUNICIPAL RECEIPTS to the SCHOOL DEPARTMENT.

M5a. AN ORDER,

Additional Information:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Communication-Order-Transfer from Ordinary Revenue to School Dep.	Cover Memo



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

September 5, 2019

City Council President Linda M. Morad and
Honorable Members of the City Council
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the City Council:

I am submitting for your approval an ORDER that the sum of **TWO MILLION, FIVE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$2,535,000)** now standing to the credit of the account from Ordinary Revenue and Municipal Receipts be and the same is hereby transferred and appropriated to as follows:

SCHOOL DEPARTMENT.....\$2,535,000

To be certified and approved by the Department Head

Sincerely,

Jon Mitchell
Mayor



CITY OF NEW BEDFORD

CITY COUNCIL

September 12, 2019

ORDERED, that the sum of **TWO MILLION, FIVE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$2,535,000)** now standing to the credit of the account from Ordinary Revenue and Municipal Receipts be and the same is hereby transferred and appropriated to as follows:

SCHOOL DEPARTMENT.....\$2,535,000

To be certified and approved by the Department Head



OFFICE OF THE CFO

ARIJ. SKY
CHIEF FINANCIAL OFFICER

CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

September 3, 2019

TO: Mayor Jonathan F. Mitchell
New Bedford City Council

FROM: Ari J. Sky

SUBJECT: Net School Spending – State Adopted Budget

The FY 2020 proposed budget incorporated estimates for State revenue as contained in the House Ways and Means budget, which was the most current version available at the time. The \$146,750,000 budget for the School Department reflected estimated Net School Spending requirements as described in Department of Elementary & Secondary Education's (DESE) preliminary guidance.

The State's FY 2020 budget, which was enacted at the end of July, included a number of revisions to local aid and assessments. Chapter 70 aid to the City was increased by \$2,809,243 and the Charter School reimbursement estimate was reduced by \$185,721 in comparison with the House Ways & Means budget. In addition, the estimated assessment for Charter Schools was increased by \$185,953 and School Choice funding was reduced by \$96,265. Subsequent to budget adoption, DESE released updated guidance which indicates that compliance with the FY 2020 Net School Spending requirement will require an additional appropriation of about \$2,535,000.

Attached please find correspondence from the School Department requesting a supplemental appropriation to bring the FY 2020 budget into compliance with Net School Spending requirements. Thank you for your consideration, and please do not hesitate to contact me if you have any questions or concerns.

Attachment



THOMAS ANDERSON
SUPERINTENDENT

NEW BEDFORD PUBLIC SCHOOLS
PAUL RODRIGUES ADMINISTRATION
BUILDING 455 COUNTY STREET
NEW BEDFORD, MASSACHUSETTS 02740
www.newbedfordschools.or

g (508) 997-4511

*"We are committed to developing a community of learners
who are academically proficient, demonstrate strong
character and exhibit self-confidence."*

KAREN A. TREADUP
DEPUTY SUPERINTENDENT

ANDREW O'LEARY
ASSISTANT
SUPERINTENDENT OF
FINANCE & OPERATIONS

HEATHER EMSLEY
EXECUTIVE DIRECTOR OF
HUMAN CAPITAL SERVICES

KIMBERLI A. BETTENCOURT
EXECUTIVE DIRECTOR OF
SPECIAL EDUCATION & STUDENT
SERVICES

SONIA WALMSLEY
EXECUTIVE DIRECTOR OF
EDUCATIONAL ACCESS &
PATHWAYS

August 27, 2019

Mr. Ari Sky
Chief Financial Officer
City of New Bedford
133 William St, Room 302
New Bedford, MA 02740

Dear Mr. Sky,

Following the conclusion of the state's budget process and finalization of Cherry Sheet assessments and charges, I am writing to request a supplemental appropriation increase of \$2,535,000 to the School Department Fiscal Year 2020 budget. This will be submitted at the next School Committee meeting scheduled for September 9, 2019.

In anticipation of School Committee's approval, I request this item be included in Mayor's papers and on the agenda for the September 12, 2019 City Council meeting.

Sincerely,

Andrew O'Leary
Asst Supt Finance & Operations



Item Title:

APPROPRIATION - MIS, SALARIES & WAGES 10,000.00 & MIS, CHARGES & SERVICES
\$160,000.00

Item Detail:

M6. COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDER for the APPROPRIATION of \$170,000.00, from ORDINARY REVENUE and MUNICIPAL RECEIPTS to MIS SALARIES AND WAGES in the amount of \$10,000.00 AND MIS CHARGES AND SERVICES in the amount of \$160,000.00.

M6a. AN ORDER,

Additional Information:

ATTACHMENTS:

Description	Type
□ Communication-Order-Transfer from Ordinary Revenue to MIS Salaries & MIS Charges & Services	Cover Memo



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

September 5, 2019

City Council President Linda M. Morad and
Honorable Members of the City Council
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the City Council:

I am submitting for your approval an ORDER that the sum of **ONE HUNDRED SEVENTY THOUSAND DOLLARS (\$170,000)** now standing to the credit of the account from **ORDINARY REVENUE AND MUNICIPAL RECEIPTS** be and the same is hereby transferred and appropriated to as follows:

MIS SALARIES AND WAGES.....\$ 10,000
MIS CHARGES AND SERVICES.....\$160,000

To be certified and approved by the Department Head

Sincerely,

Jon Mitchell
Mayor



CITY OF NEW BEDFORD

CITY COUNCIL

September 12, 2019

ORDERED, that the sum of **ONE HUNDRED SEVENTY THOUSAND DOLLARS (\$170,000)** now standing to the credit of the account from **ORDINARY REVENUE AND MUNICIPAL RECEIPTS** be and the same is hereby transferred and appropriated to as follows:

MIS SALARIES AND WAGES.....\$ 10,000
MIS CHARGES AND SERVICES.....\$160,000

To be certified and approved by the Department Head



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

OFFICE OF THE CFO

ARI J. SKY
CHIEF FINANCIAL OFFICER

September 5, 2019

TO: Mayor Mitchell
New Bedford City Council

FROM: Ari J. Sky

SUBJECT: FY 2020 Cyber Recovery Expenses

The City has made substantial progress in its recovery from the July cyber incident. The server network has been completely rebuilt, all of the impacted workstations have been replaced and nearly all applications have been restored. The City's cyber insurance policy, which reimburses expenses up to \$1 million per claim, is an invaluable component of the recovery. However, the policy does not cover ongoing expenses, equipment or direct personnel costs.

To date, the City has assigned \$122,981 in eligible expenses to the policy. This total consists of \$85,422 for consultants who assisted with computer and system restoration, data entry and forensic analysis, and \$37,559 for software to assist in restoration activities. Replacement workstations and hard drives were purchased using existing appropriations. A number of eligible additional insurance-eligible expenses are expected in the coming months:

- Data entry work will continue for restoration of the cemetery and assessment databases and the GIS system, as well as the remaining Access databases.
- Final invoices from the network restoration consultant are outstanding.
- The City has not yet received an invoice from outside counsel.

In addition, the City will incur expenses associated with disclosure, including data research and notification of potentially impacted individuals.

Non-Covered Activities

While the system has been secured, the data breach highlighted several areas that will require additional resources to address:

- Antivirus protection is purchased on an annual subscription and is not covered by insurance. MIS's FY 2020 budget includes funding for Malwarebytes (\$17,146), however, continued use of SentinelOne will cost \$75,250 per year. As part of the service, SentinelOne will actively monitor the City's system and quarantine threats before they can be deployed.
- The new antivirus systems consume significant network bandwidth due to their active monitoring approach. As a result, it will be necessary to enhance our network connections. MIS has identified a high-speed solution through Open Cape that will cost \$15,926 in FY 2020, \$18,342 in FY 2021.
- The City has implemented an interim solution to protect backup files by shutting down the back up servers when they are inactive. The most effective solution will be to acquire offsite Cloud-based storage that will be immune to direct attack. A cloud storage system for the City's data will cost \$37,000 per year.
- Moving forward, it will be essential for the City to have a concrete plan in place. Initial inquiries regarding the hiring of an outside consultant to conduct a cyber assessment and identify infrastructure needs indicate that a study will cost about \$30,000.
- MIS currently has two vacant system analyst positions, which occurred near the end of FY 2019. The recruitment process identified two qualified candidates who have been offered positions. While significant changes are anticipated in response to the cyber assessment, recent events have demonstrated that the current staffing profile is insufficient to provide adequate coverage. In the interim, an upgrade of the existing Computer Support Specialist to a Systems Analyst and backfilling the position would constitute a moderate approach to augment the department's capacity. Much of the additional cost in FY 2020 can be accomplished utilizing the existing MIS budget, although the net additional position would cost about \$31,000 in FY 2021.

The following table summarizes items that would be funded in FY 2020. Future expenses beyond those summarized in this document would be identified as part of the FY 2021 budget process.

Description	Amount
SentinelOne	\$75,250
Open Cape	\$15,926
Cloud-based storage	\$37,000
Cyber Assessment/Plan	\$30,000
<u>Backfill Computer Specialist</u>	<u>\$10,000</u>
Total for FY 2020:	\$168,176

In addition to the items listed previously, the City has been working with the State to implement cyber awareness training for employees. The State's Office of Municipal and School Technology has acquired licenses for sustained online training at a deep discount and has indicated a willingness to fund a portion of the cost for all personnel. The net cost for the City is yet to be determined, although it should be relatively minor.

The implementation of these measures, which will require a supplemental appropriation to the MIS budget, would represent a significant initial commitment toward enhanced network security and would secure our reconstructed network going forward. I respectfully request the inclusion of a \$170,000 appropriation in the Mayor's Papers for the September 12, 2019, City Council meeting.

Thank you for your consideration.



Item Title:

WAIVER OF RESIDENCY - SCOT SERVIS - AIRPORT MANAGER

Item Detail:

M7. COMMUNICATION, Mayor Mitchell, to City Council, submitting a ONE-YEAR Waiver of Residency for SCOT SERVIS, Airport Manager for the New Bedford Regional Airport, who currently resides in Lakeville, MA.

Additional Information:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Communication-Residency Waiver-Scot Servis-Airport Manager	Cover Memo



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

August 27, 2019

City Council President Linda M. Morad
Honorable Members of the City Council
133 Williams Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the City Council:

I would like to request a one-year **Waiver of Residency** for Scot Servis, Airport Manager for the New Bedford Regional Airport, who currently resides in Lakeville, Massachusetts.

As you know, Mr. Servis was selected for the Managers position in November 2016. The City Council most recently provided a Waiver of Residency to Mr. Servis on September 13, 2018.

Please also find attached correspondence from the Airport Commission in support of this request. Airport Commission Chairman Paul Barton and Mr. Servis will be available at the meeting to answer any questions.

Sincerely,

Jonathan F. Mitchell
Mayor

cc: Scot Servis
New Bedford Regional Airport Commission
Personnel Office

August 27, 2019

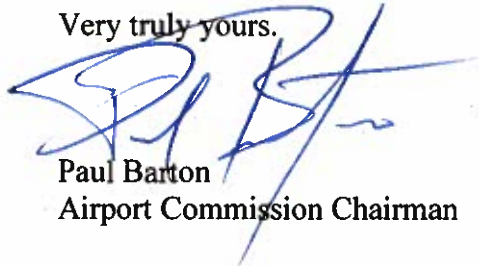
Mayor Jonathan F. Mitchell
City of New Bedford
133 Williams Street
New Bedford, MA 02740

Dear Mayor Mitchell:

I respectfully request placement on the September 12th City Council Agenda for approval of a residency waiver for Scot Servis, Airport manager.

Thank you for your assistance.

Very truly yours.

A handwritten signature in blue ink, appearing to be 'P. Barton', is written over the typed name and title.

Paul Barton
Airport Commission Chairman

cc: Paul Barton, Airport Commission Chairman
Personnel



Item Title:

WAIVER OF RESIDENCY - SHAWN SYDE - CITY ENGINEER

Item Detail:

M8. COMMUNICATION, Mayor Mitchell, to City Council, submitting a ONE-YEAR Waiver of Residency for SHAWN SYDE, as a City Engineer, Department of Public Infrastructure, who currently resides in Fall River, MA.

Additional Information:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Communication-Residency Waiver-Shawn Syde-DPI	Cover Memo



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

August 29, 2019

City Council President Linda M. Morad
Honorable Members of the City Council
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the City Council:

I would like to request a one-year **Waiver of Residency** for Shawn Syde, City Engineer for the Department of Public Infrastructure who currently resides in Fall River, Massachusetts.

I have attached correspondence from Commissioner Jamie Ponte to support the reason for this request.

Mr. Syde and Commissioner Ponte will be available at the meeting to answer any questions.

Sincerely,



Jonathan F. Mitchell
Mayor

JFM/sds
Attachment

cc: Shawn Syde
Personnel
DPI



Department of Public Infrastructure

Jamie Ponte
Commissioner

Water
Wastewater
Highways
Engineering
Cemeteries
Park Maintenance
Forestry
Energy

CITY OF NEW BEDFORD

Jonathan F. Mitchell, Mayor

August 26, 2019

Mayor Jonathan F. Mitchell
City of New Bedford
133 William Street
New Bedford, MA 02740

Dear Mayor Mitchell:

I am respectfully requesting, your submission, to the New Bedford City Council, the recommendation by the Commissioner of Public Infrastructure, for a one-year waiver of residency for Shawn Syde.

Mr. Syde has been working for The Department of Public Infrastructure as the City Engineer for the past year. Before coming to work for The Department of Public Infrastructure, Mr. Syde worked closely with the Department as a consulting Engineer for 17 years. His knowledge of the city's infrastructure is vast. He has proven to have been readily available and reliable at all times. Mr. Syde has always been a great supporter of the City of New Bedford. Shawn currently resides at:

563 Orswell Street
Fall River, Ma 02721

Shawn possesses the following qualifications:

PROFILE

Civil engineer with project and team based experience providing high-quality consulting based services effectively and efficiently. Currently a Principal and Project Manager with leadership, management, technical and business development responsibilities. A Registered Professional Engineer with over 17-years of experience in the civil/environmental/water resources field. Have a history of outstanding client relationships and technical team development.

REGISTRATIONS

Professional Engineer (Civil)

Commonwealth of Massachusetts

State of Rhode Island

No. 46700 Civil

No. 9120

April 2006

March 2009

National Association of Sewer Service Companies (NASSCO)

Pipeline Assessment Certification Program (PACP)

Manhole Assessment Certification Program (MACP)

EMPLOYMENT

Principal Engineer/Project Manager

2001 to 2018

CDM Smith Inc., Boston, MA

- Project Manager for water, wastewater, landscaping, roadway reconstruction/complete streets, flood control, water resources and storm water projects.
- Technical Specialist in large diameter pipelines and gravity wastewater and storm water conveyance facilities.
- Lead Engineer for City of New Bedford's wastewater system upgrades program since 2001.
- Program Manager for City of New Bedford water and wastewater infrastructure programs
- Technical team oversight, quality assurance, sub-consultant management, financial management and staff mentorship.
- Responsible for managing and implementation of over \$15 million in projects and \$150 million in construction.

EDUCATION

Master of Science in Environmental Engineering, Worcester Polytechnic Institute, 2008

Bachelor of Science in Civil Engineering, University of Massachusetts Dartmouth, 2001

AWARDS

American Council of Engineering Companies/Massachusetts (ACECMA) Engineering Excellence Awards

- Engineering Excellence Silver Award - March 2017
- New Bedford Hurricane Barrier Access Improvements, New Bedford, MA

PROFESSIONAL ORGANIZATIONS

New England Water Environment Association (NEWEA) - Member

- Member of Collection System Committee
- Co-Chair 2018 Collection System Specialty Conference
- 2018 Initiative Steering Committee
- MassDEP I/I Guidelines Revision Team (2016)

PRESENTATIONS

- From Water to Energy - Combined Infrastructure Department Bridges the Generational Gap While Yielding Efficiencies and Mentorship. Presented at the combined American Water Works Association (AWWA) and WEF Utility Management Conference, February 2017.
- Captain Plunger to the Rescue - How New Bedford Transformed Their IPP and FOG Program Using Outreach and Technology. Presented at NEWEA Spring Meeting June 2016.
- A Whale of a Collection System! Utilizing SWMM Modeling to Develop Integrated Capital Planning Solutions. Presented at World Environmental and Water Resources (EWRI) Congress, May 2016.
- City of New Bedford CSO Abatement Program. In the middle of developing an Integrated Capital Plan and LTCP....Presented at NEWEA CSO Specialty Conference, October 2015.

- 2014 -A CMOM Odyssey – Modernizing New Bedford's CMOM and Asset Management Programs. Presented at the NEWEA Spring Meeting, June 2015.
- Creative Approach to Removing PCB Contaminated Grit and Rehabilitation New Bedford's Main Interceptor. Presented at North American Society for Trenchless Technology (NASTT) No-Dig conference, May 2014.
- Cleaning and Repairing New Bedford's Main Interceptor – Overcoming Challenges Associated with Removing PCB Contaminated Grit. Presented at WEF Collection System Conference, March 20 14.
- Cleaning and Repairing New Bedford's Main Interceptor – Cast Study in Project Planning and Implementation. Presented at the NEWEA Annual Conference, January 2012.
- Utilizing SWMM Modeling to Document New Bedford's CSO Reduction Success. Presented at New England Water Environment Association (NEWEA) CSO Specialty Conference, May 2008.
- Combining Pilot I/I Remediation with System Modeling to Guide SSO Reduction Decision Making. Presented at Water Environment Federation's (WEF) Collection System Conference, June 2003.

PUBLICATIONS

- Balancing Science, Cost, and Net Environmental Benefits through Integrated Planning to Support a Negotiated Settlement of an NPDES Permit for a Small Community. WEFTEC 2018.
- Restoring Capacity and Reinforcement of New Bedford's Main Interceptor. WEF TEC 2011.

RELEVANT EXPERIENCE AND ACCOMPLISHMENTS

Business Development: Involved in marketing and business development with new and existing client in cooperation with marketing development.

- Developed written proposals for sole source and competitively bid projects.
- Performed business development by working with clients to develop projects.
- Prepared technical approach, qualifications and labor cost estimates for proposals.

Client Relations and Management: Experience in working directly with a diverse client base including federal, state and municipal agencies.

- Provide quality service to clients by building and maintaining relationships with key personnel and focusing on fulfilling client's preference during project development
- Responsible for managing multiple client departments and sub-consultant companies on a single project.
- Responsible for developing grant applications and technical approach for acquiring grant money.
- Project management for multi-disciplinary teams of over 10 staff engineers simultaneously.
- State Revolving Fund (SRF) Program management including funding and loan application development.
- Responsible for coordinating and presenting at public meetings, workshops, and open-house events for various types of projects.

- Lead regulatory agency coordination and negotiations on enforcement and regulatory compliance documents including NPDES permits and AOCs.
- Program management for City of New Bedford's \$150 million capital improvements program including oversight of management team, financial management, construction management and project coordination.

Wastewater and Civil/Site Design: Planning, design, and permitting projects including water and wastewater systems, wastewater pumping stations, drainage designs, complete streets, and other site improvements.

- Project Manager and Lead Engineer on sanitary sewer, combined sewer overflow (CSO) separation, and storm water system improvements in excess of \$100 million in construction with pipes ranging in size from 8-in to 144-in in residential and urban areas integrating a Complete Streets approach including roadway improvements, ADA compliance, and streetscaping.
- Project Manager and Lead Engineer for City of New Bedford's CMOM Program and Asset Management Program including LUCITY deployment.
- Project Manager and Lead Engineer on eight 111 remediation projects including five flow metering projects in sewer systems with over 300 miles of pipeline and three SSES projects.
- Project Manager and Lead Engineer on numerous pipeline condition assessment and rehabilitation projects utilizing multiple types of inspection technologies and trenchless rehabilitation methods.
- Project Manager of wastewater pumping station upgrades including New Bedford's Front Street pumping station and low-pressure sewer system designs.
- Lead Engineer on City of New Bedford's Part 1 and 111 Transmission Main Reinforcement Program. Lead Engineer on City of Woburn's Rag Rock Mountain Water Storage Tank
- Project Manager for City of New Bedford's International Marketplace utility and roadway improvements.
- Project Manager for City of New Bedford's Organics to Energy Facility project.

Water Resources: Performed project management and engineering on major flood control, collection system modeling, storm water modeling and water resources projects.

- Project Director and Civil Engineer on award winning Hurricane Barrier Access Improvements project on the New Bedford-Fairhaven Hurricane Barrier.
- Project Manager for New Bedford's Buttonwood Park Pond Dam and New Bedford Reservoir Dam Office of Dam Safety (ODs) Phase I and Phase I1 Compliance Reports,
- Project Manager and CSO Specialist for City of New Bedford's Long Term CSO Control and Integrated Capital Improvements Plan.
- Lead Engineer for City of New Bedford's CSO Abatement Program Updated Baseline Conditions Assessment including development of a calibrated SWMM model.

Storm water: Analysis and design of storm water system and BMPs.

- Project Manager for Town of Marion's Village Area storm water system evaluation.
- Project Manager for City of New Bedford's MS4 Permit Compliance project including oversight of field programs and sub-consultants.
- Lead Engineer on various projects including the design of storm water BMPs, treatment systems, and conveyance systems including innovative structural and non-structural hydraulic controls and drainage improvements.

Additional Project Experience: Multi-disciplinary project engineering and management experience on various types of civil and water resources projects.

- Project Manager for New Bedford Route 6 Pedestrian Bridge Inspection Program
- Project Manager for Town of Marion Roadway Improvements Program and Village Area Capital Improvements Program
- Project Manager for City of New Bedford Harbor Development Commission's Electrical System Upgrade Project.
- Utility and Infrastructure Specialist for City of New Bedford's MVP Community Program.
- Project Manager for Town of Marion's Phase 1 DPW Garage and Complex Master Planning Project
- Project Director for City of New Bedford's Fishermen's Memorial at Monkey's Island.

I am available to answer any questions that you may have regarding this request.

Thank You for your consideration in this matter.

Very truly yours,



Jamie Ponte
Commissioner



Item Title:

WAIVER OF RESIDENCY - THOMAS J. MATHIEU - ASSOCIATE CITY SOLICITOR

Item Detail:

M9. COMMUNICATION, Mayor Mitchell, to City Council, submitting a ONE-YEAR Waiver of Residency for THOMAS J. MATHIEU, Associate City Solicitor, with the Office of the City Solicitor, who currently resides in Raynham, MA.

Additional Information:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Communication-Residency Waiver-Thomas Mathieu-Solicitor's	Cover Memo



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

August 29, 2019

City Council President Linda M. Morad
Honorable Members of the City Council
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the City Council:

I would like to request a one year **Waiver of Residency** for Thomas J. Mathieu, Associate City Solicitor with the Office of the City Solicitor, who currently resides in Raynham, Massachusetts.

I have attached correspondence to support the reason for this request.

Thomas J. Mathieu and City Solicitor Mikaela McDermott will be available at the meeting to answer any questions.

Sincerely,

Jonathan F. Mitchell
Mayor

JFM/sds
Attachment

cc: Thomas J. Mathieu
City Solicitor's Office
Personnel



City of New Bedford
OFFICE OF THE CITY SOLICITOR

MIKAELA A. McDERMOTT
City Solicitor
JANE MEDEIROS FRIEDMAN
First Assistant City Solicitor

ERIC JAIKES
KREG R. ESPINOLA
Assistant City Solicitors
SHANNON C. SHREVE
ERIC C. COHEN
JOHN E. FLOR
THOMAS J. MATHIEU
ELIZABETH TREADUP PIO
Associate City Solicitors

August 26, 2019

Mayor Jonathan F. Mitchell
CITY OF NEW BEDFORD
Office of the Mayor
133 William Street, Room 311
New Bedford, MA 02740

RE: THOMAS J. MATHIEU – REQUEST FOR RESIDENCY WAIVER

Dear Mayor Mitchell:

Pursuant to Section 19-25, I respectfully request a waiver of the City Residency Ordinance to enable the City of New Bedford to continue to employ **Thomas J. Mathieu** (Raynham, MA) as a *Associate City Solicitor* with the Office of the City Solicitor.

Please be advised that a *One Year Residency Waiver* was approved by the City Council on *September 13, 2018* (expiration September 2019).

I respectfully request that this matter be placed on the next City Council Agenda.

Very truly yours,

Mikaela A. McDermott
City Solicitor

MAM/bar



Item Title:

DEBRA TRAHAN - APPOINTMENT - ZONING BOARD OF APPEALS - ALTERNATE MEMBER

Item Detail:

M10. COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of DEBRA TRAHAN, New Bedford, MA 02745 to the ZONING BOARD OF APPEALS as an Alternate Member; this this term will expire December 2023.

Additional Information:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Communication-Appointment-Debra Trahan-ZBA	Cover Memo



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

August 29, 2019

City Council President Linda Morad
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the Council:

I am submitting for your approval the **APPOINTMENT** of **DEBRA TRAHAN** of 20 Maryland Street, New Bedford, MA 02745 to the **ZONING BOARD OF APPEALS** as an alternate member. This term will expire in December 2023.

Sincerely,



Jonathan F. Mitchell
Mayor

JFM/dlr

cc: ZBA
Debra Trahan



ZBA Alternate

**CITY OF NEW BEDFORD
BOARD & COMMISSION APPLICATION**

The Mayor is seeking citizens who wish to serve on City Boards and Commissions established to assist and advise the City on specific matters. Please complete this application in full (attach a resume and other information which may assist the Mayor and the City Council in making its selection) and file it with the Personnel Office. The Mayor reserves the right to reject any application. Some appointments are subject to confirmation by the City Council.

Board/Commission applying for: (see reverse side) ZBA

Name: Debra Trahan

Ema _____

Home Telephone _____

Work Telephone: SAME

Residence Address 20 Maryland St.

Zip: 02745

Present Occupation & Place of Employment: TRAHAN Real Estate

Educational Background: APPRAISAL INST Real Estate SALES

Memberships in Community Organizations or Professional Groups: PAST

NORTH END BUSINESS ASSOCIATION Volunteer

SOUTH END BUSINESS ASSOCIATION MEMBER

City Boards and/or Commissions on which you have previously served:

OS the Board

ZBA 26 years

The reasons why you wish to be considered for appointment by the Mayor:

Serving AS A ALTERNATE TO be AVAILABLE
TO ESTABLISH A quorum IF needed.

Please detail specific areas of expertise:

Real Estate APPRAISER & Real Estate
SALES

Please detail specific areas of interest:

INTERESTED IN CONTINUING TO IMPROVE
OUR CITY & Job Force

Available for meetings in the daytime ☐ evenings ☐ both ☒ (check one)

Resident of the City since what year: 1957

Appointees and incumbents may be required to file a Statement of Economic Interest, as required by the City Council Rules or the Mayor. The statement may require a declaration that you have no interest in conflict with the City of New Bedford. Please return your completed application to the Personnel Department, 113 William St., Room 212, New Bedford, MA 02740.

Applications will be kept on file for two years.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
INFORMATION IS TRUE AND CORRECT.**

Signature of Applicant:

Debra Trahan

Date: 8/15/2019



Item Title:

WILLIAM ANDREWS - APPOINTMENT - VETERAN'S ADVISORY BOARD

Item Detail:

M11. COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of WILLIAM ANDREWS, New Bedford, MA to the VETERAN'S ADVISORY BOARD; Mr. Andrews will be replacing Oliver E. Moreau, Sr., whose term has expired; this term will expire December 2019.

Additional Information:

ATTACHMENTS:

Description	Type
Communication-Appointment-William Andrews-Veteran's Advisory Board	Cover Memo



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

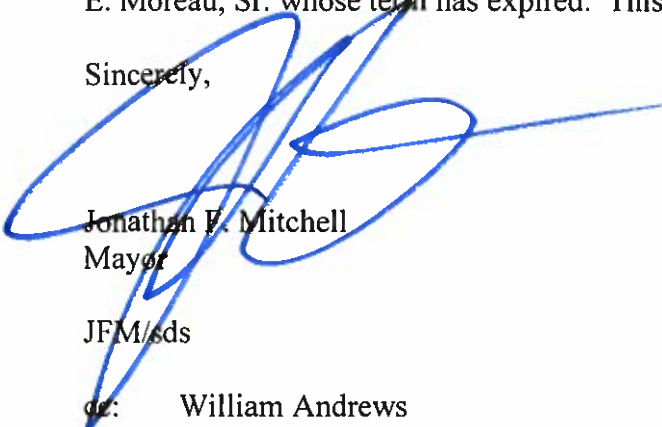
August 29, 2019

City Council President Linda M. Morad
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the City Council:

I am submitting for your approval the **APPOINTMENT** of William Andrews of 941 Pine Hill Drive, New Bedford to the **Veteran's Advisory Board**. Mr. Andrews will be replacing Oliver E. Moreau, Sr. whose term has expired. This term will expire in December 2019.

Sincerely,



Jonathan F. Mitchell
Mayor

JFM/sds

cc: William Andrews
Veterans Advisory Board



CITY OF NEW BEDFORD BOARD & COMMISSION APPLICATION

The Mayor is seeking citizens who wish to serve on City Boards and Commissions established to assist and advise the City on specific matters. Please complete this application in full (attach a resume and other information which may assist the Mayor and the City Council in making its selection) and file it with the Personnel Office. The Mayor reserves the right to reject any application. Some appointments are subject to confirmation by the City Council.

Board/Commission applying for: (see reverse side) VETERANS ADVISORY BOARD

Name: William Andrews Email: -

Home Telephone: _____ Work Telephone: _____

Residence Address: 941 Pine Hill Drive Zip: 02745

Present Occupation & Place of Employment: FIREMAN / Ashland Chemicals

Educational Background: GREATER NB VOC HS / BCC

Memberships in Community Organizations or Professional Groups:

N/A

City Boards and/or Commissions on which you have previously served:

N/A

The reasons why you wish to be considered for appointment by the Mayor: RETIRED US ARMY STATE SERGEANT, IRAG COMBAT VET, LIFE LONG NB RESIDENT.

Please detail specific areas of expertise: INDUSTRIAL MECHANIC - MILL WRIGHT, POWER PLANT OPERATION FOR OVER 30 YEARS AS WELL AS SERVING OVER 17 YEARS MILITARY - INFANTRY SQUAD LEADER 05-06 IRAG.

Please detail specific areas of interest: HELPING FELLOW VETERANS TRANSITIONING BACK.

Available for meetings in the daytime ☐ evenings ☐ both ☒ (check one)

Resident of the City since what year: 1965

Appointees and incumbents may be required to file a Statement of Economic Interest, as required by the City Council Rules or the Mayor. The statement may require a declaration that you have no interest in conflict with the City of New Bedford. Please return your completed application to the Personnel Department, 133 William St., Room 212, New Bedford, MA 02740.

Applications will be kept on file for two years.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
INFORMATION IS TRUE AND CORRECT.**

Signature of Applicant: W Andrews

Date: 2 July 19



Item Title:

REPORT - ELIZABETH MCNAMARA - APPOINTMENT - VETERANS ADVISORY BOARD

Item Detail:

3. REPORT, Committee on Appointments & Briefings, recommending to the City Council APPROVAL of the APPOINTMENT of ELIZABETH C. MCNAMARA, New Bedford, MA to the VETERANS ADVISORY BOARD; Ms. McNamara will be replacing Nelson Ostiguy whose term has expired; this term will expire December 2020.

3a. COMMUNICATION, Mayor Mitchell, to City Council, submitting the APPOINTMENT of ELIZABETH C. MCNAMARA, New Bedford, MA to the VETERANS ADVISORY BOARD; Ms. McNamara will be replacing Nelson Ostiguy whose term has expired; this term will expire December 2020. (Referred to the Committee on Appointments and Briefings – July 18, 2019.)

Additional Information:



Item Title:

REPORT - SPECIAL PERMIT APPLICATION - CHRISTOPHER ZAMMITO d/b/a RPCV AUTOBODY LLC, 49 POTOMSKA STREET

Item Detail:

4. REPORT, Committee on Appointments & Briefings, recommending to the City Council APPROVAL of the APPLICATION, Christopher Zammito, D/B/A RPCV Autobody, LLC, for a SPECIAL PERMIT for Motor Vehicles Sales and Rentals, Body Repair, General Repair and Light Service at 49 Potomska Street, New Bedford, MA 02740.

4a. SPECIAL PERMIT, CHRISTOPHER ZAMMITO, d/b/a RPCV AUTOBODY, LLC, for a SPECIAL PERMIT for Motor Vehicles Sales and Rentals, Body Repair, General Repair and Light Service at 49 Potomska Street, New Bedford, MA 02740.

Additional Information:



Item Title:

REPORT - INCREASE CROSSING GUARDS AT SCHOOLS - NO FURTHER ACTION

Item Detail:

5. REPORT, Committee on Appointments & Briefings, recommending to the City Council to take **“NO FURTHER ACTION”** on the Written Motion, Councillors Coelho and Giesta, requesting, that a representative from the New Bedford Public Schools meet with the Committee on Appointments and Briefings to discuss ideas on how to increase the amount of Crossing Guards at the public schools.

5a. WRITTEN MOTION, Councillors Coelho and Giesta, requesting, that a representative from the New Bedford Public Schools meet with the Committee on Appointments and Briefings to discuss ideas on how to increase the amount of Crossing Guards at the public schools. (Referred to the Committee on Appointments and Briefings – March 28, 2019.)

Additional Information:



Item Title:

AN ORDINANCE - CHAPTER 19 PERSONNEL

Item Detail:

6. AN ORDINANCE, amending Chapter 19, Section 19-7 (c) by inserting the title of Assistant Superintendent of Highways & Utilities M-12 and the title of Executive Finance and Operations Specialist M13. (Passed to a Second Reading - August 15, 2019.)

Additional Information:

ATTACHMENTS:

Description	Type
□ AN ORDINANCE,	Cover Memo



CITY OF NEW BEDFORD

In the Year Two Thousand and Nineteen

AN ORDINANCE

Amending Chapter 19, Personnel

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1. Chapter 19, Section 19-7(c) is hereby amended by inserting the title of Assistant Superintendent of Highways & Utility” at pay grade “M-12”. Chapter 19, Section 19-7(c) is further amended by inserting the title of “Executive Finance and Operations Specialist” at pay grade “M-13”. The amended portions of the salary schedule shall read as follows:

Title	Grade
Assistant Superintendent of Highways & Utilities	M-12
Executive Finance and Operations Specialist	M-13

Section 2. This ordinance shall take effect in accordance with the provisions of Chapter 43 of the General Laws.



Item Title:

WRITTEN MOTION - NEW BEDFORD REDEVELOPMENT AUTHORITY

Item Detail:

7. WRITTEN MOTION, Councillor Lopes, requesting, that the Committee on Ordinances review the establishment and membership of the New Bedford Redevelopment Authority. (To be Referred to the Committee on Ordinances.)

Additional Information:



Item Title:

WRITTEN MOTION - RT. 18 PHASE II STREET CLOSURES

Item Detail:

8. WRITTEN MOTION, Councillor Lopes, requesting, that that a representative from the Department of Public Infrastructure meet with the Committee on Appointments and Briefings to discuss the street closures associated with the Rt. 18 Phase II project.

Additional Information:



Item Title:

WRITTEN MOTION - AMEND CHAPTER 9, SECTION 4131B (ii) (a) - DELETED THE WORDS "MARIJUANA ESTABLISHMENT"

Item Detail:

9. WRITTEN MOTION, Councillor Lopes, requesting that the Committee on Ordinances, amend the Code of Ordinances, Chapter 9, Section 4130B, by deleting the words "Marijuana Establishment" from Section 4131B (ii) (a). (To be Referred to the Committee on Ordinances.)

Additional Information:



Item Title:

WRITTEN MOTION - CITY'S CYBER-ATTACK

Item Detail:

10. WRITTEN MOTION, Councillor Gomes, requesting that the Administration and the MIS Department release more information on the cyber-attack that happened on the City's computer system, and if Residents and/or employees sensitive information was compromised and how will the City continue to address this issue now and in the future especially if personal information has been stolen; and further prior to the attack what computer safety measures should have been in place to prevent such a breach and if this attack was the first or have there been others. (To be Referred to the Committees on Internal Affairs and Public Safety and Neighborhoods.)

Additional Information:



Item Title:

DEMOLITION REVIEW - 697 ASHLEY BOULEVARD

Item Detail:

11. COMMUNICATION/DEMOLITION, Anne Louro, Preservation Planner, to City Council, re: BUILDING DEMOLITION REVIEW of 697 ASHLEY BOULEVARD, (MAP 114/LOT 320), a Circa 1932 one-story concrete block, former gas/auto repair station, advising that “the structure is not located in a National Register Historic District; the structure is of no notable historic significance either recorded or found with the existing condition of the structure, in light of these findings, the Preservation Planner has determined that the residential structure at 697 Ashley Boulevard is neither a Historically Significant nor a Preferably Preserved Structure.”

Additional Information:

ATTACHMENTS:

Description	Type
DEMOLITION REVIEW - 697 Ashley Boulevard	Cover Memo



PLANNING DIRECTOR
TABITHA HARKIN

CITY OF NEW BEDFORD DEPARTMENT OF CITY PLANNING

133 William Street • Room 303 • New Bedford, MA 02740
508-979-1488 • www.newbedford-ma.gov

HISTORICAL COMMISSION

MEMORANDUM

TO: New Bedford City Council

FROM: Anne Louro, Preservation Planner

DATE: August 21, 2019

RE: **BUILDING DEMOLITION REVIEW**
697 Ashley Boulevard (MAP 114, Lot 320)
Circa 1932 one-story concrete block, former gas/auto repair station

CITY CLERKS OFFICE
NEW BEDFORD, MA
2019 AUG 22 A 11:28
CITY CLERK

In accordance with the requirements of the New Bedford City Code, Article XI, Section 2-157 Demolition of Buildings, the Preservation Planner, designated to act on behalf of the New Bedford Historical Commission, has examined the structures located at the above-captioned sites in order to determine their historical significance and whether it is in the public interest to preserve such structures.

Having reviewed the application for demolition I offer the following findings and recommendation in this matter to the New Bedford City Council:

- The structure is not located in a National Register Historic District.
- The structure is of no notable historic significance either recorded or found with the existing condition of the structure.

In light of these findings, the Preservation Planner has determined that the residential structure at 697 Ashley Boulevard is neither a Historically Significant nor a Preferably Preserved Structure.

cc: Michael Panagakos, Property Owner
Department of Inspectional Services
Mayor's Office
Councilor Maria Giesta
New Bedford Historical Commission



Item Title:

DEMOLITION REVIEW - 494 WOOD STREET

Item Detail:

12. COMMUNICATION/DEMOLITION, Anne Louro, Preservation Planner, to City Council, re: BUILDING DEMOLITION REVIEW of 494 WOOD STREET, (MAP 114/LOT 131), a Circa 1930 one-story concrete block, commercial garage type structure, advising that “the structure is not located in a National Register Historic District; the structure is of no notable historic significance either recorded or found with the existing condition of the structure, in light of these findings, the Preservation Planner has determined that the residential structure at 494 Wood Street is neither a Historically Significant nor a Preferably Preserved Structure.”

Additional Information:

ATTACHMENTS:

Description	Type
DEMOLITION REVIEW - 494 WOOD STREET	Cover Memo



PLANNING DIRECTOR
TABITHA HARKIN

CITY OF NEW BEDFORD DEPARTMENT OF CITY PLANNING

133 William Street • Room 303 • New Bedford, MA 02740
508-979-1488 • www.newbedford-ma.gov

HISTORICAL COMMISSION

MEMORANDUM

TO: New Bedford City Council

FROM: Anne Louro, Preservation Planner

DATE: August 21, 2019

RE: **BUILDING DEMOLITION REVIEW**
494 Wood Street (MAP 114, Lot 131)
Circa 1930 one-story concrete block, commercial garage type structure

CITY CLERK
2019 AUG 22 A 11:28
CITY CLERKS OFFICE
NEW BEDFORD, MA

In accordance with the requirements of the New Bedford City Code, Article XI, Section 2-157 Demolition of Buildings, the Preservation Planner, designated to act on behalf of the New Bedford Historical Commission, has examined the structures located at the above-captioned sites in order to determine their historical significance and whether it is in the public interest to preserve such structures.

Having reviewed the application for demolition I offer the following findings and recommendation in this matter to the New Bedford City Council:

- The structure is not located in a National Register Historic District.
- The structure is of no notable historic significance either recorded or found with the existing condition of the structure.

In light of these findings, the Preservation Planner has determined that the residential structure at 494 Wood Street is neither a Historically Significant nor a Preferably Preserved Structure.

cc: Michael Panagakos, Property Owner
Department of Inspectional Services
Mayor's Office
Councilor Maria Giesta
New Bedford Historical Commission



Item Title:

COMMUNICATION - TREE BEARD, INC., - HOST SCREENING COMMITTEE'S FAVORABLE RECOMMENDATION TO NEGOTIATE A HOST AGREEMENT

Item Detail:

13. COMMUNICATION, Council President Morad, submitting a copy of a Host Community Agreement, from Nicholas A. Gomes, Chief Legal Counsel, Tree Beard, Inc., for a proposed Recreational Marijuana Establishment at 1 Nauset Street, New Bedford, also enclosed is a zoning conformance letter from the Department of Inspectional Services and a letter from Tabitha Harkin, City Planner stating the HCA Screening Committee's favorable recommendation to negotiate a Host Agreement. (Copy all Councillors 08/27/2019.) (To be Referred to the Special Committee on Cannabis Regulation and Host Community Agreements Review.)

Additional Information:



Item Title:

COMMUNICATION - ENVIRONMENTAL NOTIFICATION FORM - 23 POPE'S ISLAND

Item Detail:

14. COMMUNICATION, Foth-CLE Engineering Group submitting a copy of an Environmental Notification Form, dated August 30, 2019, on behalf of Cooke Island LLC for a proposal to license and maintain existing fill and building, pile anchored barges, a reconfiguration zone and a gangway supported by a concrete pad at 23 Pope's Island, New Bedford, MA. (To be Received and Placed on File.)

Additional Information:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> ENVIRONMENTAL NOTIFICATION FORM	Cover Memo

August 30, 2019

New Bedford Board of Selectmen
Town Hall
133 William Street
New Bedford, MA 02740

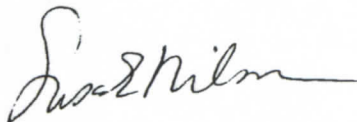
**Re: Environmental Notification Form
License and Maintain Existing Fill, Building, Proposed Pile Anchored Barges,
Reconfiguration Zone, and Gangway
23 Popes Island, New Bedford, MA 02740**

To Whom It May Concern:

On behalf of Cooke Island, LLC, Foth-CLE Engineering Group (Foth-CLE) is pleased to submit the enclosed Environmental Notification Form (ENF) as per the Massachusetts Environmental Protection Act (MEPA) for the above referenced project. Cooke Island, LLC is proposing to license existing fill and building, and proposes pile anchored barges, a reconfiguration zone, and a gangway supported by a concrete pad. The proposed project will greatly improve water access at Pope's Island. Details pertaining to the proposed project are provided in **Exhibit A**, Project Narrative.

Feel free to contact me at (508) 762-0764 or Susan.Nilson@foth.com if you require any additional information or have any questions. Thank you for your assistance.

Sincerely,
Foth-CLE Engineering Group

A handwritten signature in black ink, appearing to read "Susan Nilson".

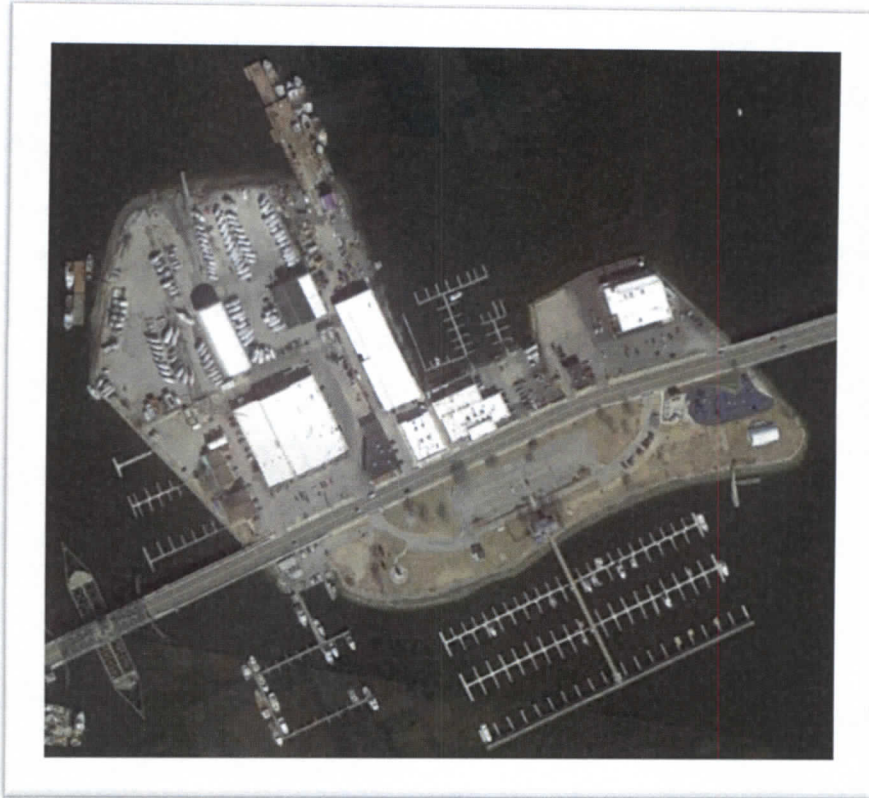
Susan Nilson, P.E.
Director, Ports & Harbors

Attachments:

Cc: Cooke Island, LLC

Environmental Notification Form

**TO LICENSE AND MAINTAIN EXISTING FILL AND PROPOSED PILE ANCHORED
BARGES AND GANGWAY**



**COOKE ISLAND REALTY, LLC
23 Popes Island, New Bedford, MA**

August 2019

**Applicant:
Cooke Island Realty, LLC**

Prepared by:



15 Creek Road | Marion, Massachusetts 02738
t: 508.748.0937 | 800.668.3220
www.Foth.com

**ENVIRONMENTAL NOTIFICATION FORM CIRCULATION LIST
COOKE ISLAND REALTY, LLC
TO LICENSE AND MAINTAIN EXISTING FILL, BUILDING, AND
PROPOSED PILE ANCHORED BARGES, RECONFIGURATION
ZONE, AND GANGWAY
AT 23 POPES ISLAND, NEW BEDFORD, MA**

Secretary of Energy and Environmental
Affairs
Attn: MEPA Office
100 Cambridge Street, Suite 900
Boston, MA 02114

New Bedford Planning Board
Town Hall
133 William Street
New Bedford, MA 02740

Department of Environmental Protection
Commissioner's Office
Attn: MEPA Coordinator
One Winter Street
Boston, MA 02108
(2 copies)

New Bedford Conservation Commission
Town Hall
133 William Street
New Bedford, MA 02740

DEP/Southeast Regional Office
Attn: MEPA Coordinator
20 Riverside Drive
Lakeville, MA 02347

New Bedford Board of Health
Town Hall
133 William Street
New Bedford, MA 02740

Massachusetts Department of Transportation
Public/Private Development Unit
10 Park Plaza
Boston, MA 02116

Massachusetts Office of Coastal Zone
Management
Attn: Project Review Coordinator
251 Causeway Street, Suite 800
Boston, MA 02114

Massachusetts Department of Transportation
District #5
Attn: MEPA Coordinator
Box 111
1000 County Street
Taunton, MA 02780

Division of Marine Fisheries
Attn: Environmental Reviewer
1213 Purchase Street. – 3rd Flr
New Bedford, MA 02744

Massachusetts Historical Commission
The MA Archives Building
220 Morrissey Boulevard
Boston, MA 02125

MA Natural Heritage Endangered Species
Program
1 Rabbit Hill Road
Westborough, MA 01581

Southeastern Regional Planning &
Economic Dev. District
88 Broadway
Taunton, MA 02780

U.S. Army Corps of Engineers
New England District, Regulatory Division
696 Virginia Road
Concord, MA

New Bedford Board of Selectmen
Town Hall
133 William Street
New Bedford, MA 02740

August 30, 2019

Secretary of Energy & Environmental Affairs
Executive Office of Energy and Environmental Affairs (EEA)
Attn: MEPA Office
100 Cambridge Street, Suite 900
Boston, MA 02114

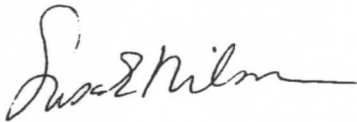
**Re: Environmental Notification Form
License and Maintain Existing Fill, Building, Proposed Pile Anchored Barges,
Reconfiguration Zone, and Gangway
23 Popes Island, New Bedford, MA 02740**

Dear Reviewer:

On behalf of Cooke Island, LLC, Foth-CLE Engineering Group (Foth-CLE) is pleased to submit the enclosed Environmental Notification Form (ENF) as per the Massachusetts Environmental Protection Act (MEPA) for the above referenced project. Cooke Island, LLC is proposing to license existing fill and building, and proposes pile anchored barges, a reconfiguration zone, and a gangway supported by a concrete pad. The proposed project will greatly improve water access at Pope's Island. Details pertaining to the proposed project are provided in **Exhibit A**, Project Narrative.

Feel free to contact me at (508) 762-0764 or Susan.Nilson@foth.com if you require any additional information or have any questions. Thank you for your assistance.

Sincerely,
Foth-CLE Engineering Group



Susan Nilson, P.E.
Director, Ports & Harbors

Attachments:

Cc: Cooke Island, LLC

Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
Massachusetts Environmental Policy Act (MEPA) Office

Environmental Notification Form

For Office Use Only

EEA#: _____

MEPA Analyst: _____

The information requested on this form must be completed in order to submit a document electronically for review under the Massachusetts Environmental Policy Act, 301 CMR 11.00.

Project Name: To License and Maintain Existing Fill and Building, and Proposed Pile Anchored Barges, Reconfiguration Zone, and Gangway		
Street Address: 23 Popes Island, New Bedford, MA 02740		
Municipality: New Bedford	Watershed: Acushnet River/ New Bedford Harbor	
Universal Transverse Mercator Coordinates:	Latitude: 41.64169° Longitude: 70.91289°	
Estimated commencement date: 2021	Estimated completion date: 2021	
Project Type: Pile Anchored Barge and Gangway	Status of project design: 90%complete	
Proponent: Cooke Island, LLC		
Street Address: 23 Popes Island Rd		
Municipality: New Bedford	State: MA	Zip Code: 02740
Name of Contact Person: Susan Nilson		
Firm/Agency: Foth Infrastructure & Environment, LLC	Street Address: 15 Creek Road	
Municipality: Marion	State: MA	Zip Code: 02738
Phone: 508-748-0937	Fax:	E-mail: Susan.Nilson@foth.com

Does this project meet or exceed a mandatory EIR threshold (see 301 CMR 11.03)?
☐ Yes ☒ No ENF Threshold

If this is an Expanded Environmental Notification Form (ENF) (see 301 CMR 11.05(7)) or a Notice of Project Change (NPC), are you requesting:

a Single EIR? (see 301 CMR 11.06(8))	<input type="checkbox"/> Yes <input type="checkbox"/> No
a Special Review Procedure? (see 301CMR 11.09)	<input type="checkbox"/> Yes <input type="checkbox"/> No
a Waiver of mandatory EIR? (see 301 CMR 11.11)	<input type="checkbox"/> Yes <input type="checkbox"/> No
a Phase I Waiver? (see 301 CMR 11.11)	<input type="checkbox"/> Yes <input type="checkbox"/> No

(Note: Greenhouse Gas Emissions analysis must be included in the Expanded ENF.)

Which MEPA review threshold(s) does the project meet or exceed (see 301 CMR 11.03)?
11.03(3)(b)1.f. and 11.03(3)(b)6.

Which State Agency Permits will the project require?

MA DEP Chapter 91 Waterways

Identify any financial assistance or land transfer from an Agency of the Commonwealth, including the Agency name and the amount of funding or land area in acres:

Summary of Project Size & Environmental Impacts	Existing	Change	Total
LAND			
Total site acreage	1.98 AC		
New acres of land altered			
Acres of impervious area	0.53 AC	N/A	0.53 AC
Square feet of new bordering vegetated wetlands alteration			
Square feet of new other wetland alteration		58.9 SF	
Acres of new non-water dependent use of tidelands or waterways			
STRUCTURES			
Gross square footage	86,249 SF	N/A	86,249 SF
Number of housing units			
Maximum height (feet)			
TRANSPORTATION			
Vehicle trips per day			
Parking spaces			
WASTEWATER			
Water Use (Gallons per day)			
Water withdrawal (GPD)			
Wastewater generation/treatment (GPD)			
Length of water mains (miles)			
Length of sewer mains (miles)			
Has this project been filed with MEPA before? <input type="checkbox"/> Yes (EEA # _____) <input checked="" type="checkbox"/> No			
Has any project on this site been filed with MEPA before? <input type="checkbox"/> Yes (EEA # _____) <input checked="" type="checkbox"/> No			

GENERAL PROJECT INFORMATION – all proponents must fill out this section

PROJECT DESCRIPTION:

Describe the existing conditions and land uses on the project site: _____

The project site is located at 23 Popes Island (Assessor's Map 60, Lot 20) (see **Exhibit B**) and within New Bedford Harbor/Acushnet River. The project is located within FEMA Flood Zone AE (EL. 6' NAVD88) and Zone X (reduced risk due to levee), Map #25005C0393G dated July 16, 2014 for Bristol County.

The solid fill on the property was licensed by DPW Lic No. 3828 (attached). The fill was licensed to el. 10' MLW (8.16 NAVD88) with a seawall extending to el. 13.5' MLW (11.66 NAVD88). According to the survey performed by Nitsch Engineering, Inc. on May 16th and 21st of 2018, the height of fill ranges from 7' to 13' NAVD88 while the crest of the existing seawall is approximately 5' NAVD88.

Based upon site survey and site observations, as shown in the attached photos, additional fill was placed above the authorized fill elevation prior to building construction and is not in compliance with the existing license. The intent of this license is to authorize the additional fill on the property.

The existing building, previously occupied by a hardware store, is classified as a general retail use building.

Additional Information in Exhibit A – Project Narrative.

Describe the proposed project and its programmatic and physical elements: _____

The proposed project includes permitting existing unauthorized fill and building, proposed reconfiguration zone, 125,000 SF of anchored barges, one (1) gangway to access the barges, and one (1) concrete pad for the gangway support at the landward end. The existing building is proposed to serve as a parts department for the Fairhaven Shipyard. The building will include a retail component and a boat engine repair shop to support the marine operations. Two barges are proposed to be placed within a proposed reconfiguration zone. The barges will be approximately 50'x250' in size and will be accessed from shore by one heavy-duty gangway (12.5'x70') that will be supported by a concrete slab (20'x20'). Each barge will be secured by pile anchors. Surrounding the barges is a proposed reconfiguration zone, to allow for flexibility in barge placement based on Shipyard needs.

Additional Information in Exhibit A – Project Narrative.

NOTE: The project description should summarize both the project's direct and indirect impacts

(including construction period impacts) in terms of their magnitude, geographic extent, duration and frequency, and reversibility, as applicable. It should also discuss the infrastructure requirements of the project and the capacity of the municipal and/or regional infrastructure to sustain these requirements into the future.

Describe the on-site project alternatives (and alternative off-site locations, if applicable), considered by the proponent, including at least one feasible alternative that is allowed under current zoning, and the reasons(s) that they were not selected as the preferred alternative:

The following alternatives that were evaluated for this project are:

- 1) No Build
- 2) Pile Supported Pier
- 3) Solid Fill Bulkhead
- 4) Floating Dock System
- 5) Off-Site Location

Additional details in Exhibit A.

NOTE: *The purpose of the alternatives analysis is to consider what effect changing the parameters and/or siting of a project, or components thereof, will have on the environment, keeping in mind that the objective of the MEPA review process is to avoid or minimize damage to the environment to the greatest extent feasible. Examples of alternative projects include alternative site locations, alternative site uses, and alternative site configurations.*

Summarize the mitigation measures proposed to offset the impacts of the preferred alternative:

- 1) Any floating debris shall be contained in the work area by floating booms and shall not be allowed to drift about the bay. All debris to be removed daily during construction.
- 2) No refueling of construction equipment shall be permitted in the immediate vicinity of any coastal resource areas.

If the project is proposed to be constructed in phases, please describe each phase:

AREAS OF CRITICAL ENVIRONMENTAL CONCERN:

Is the project within or adjacent to an Area of Critical Environmental Concern?

☐ Yes (Specify _____)

☒ No

if yes, does the ACEC have an approved Resource Management Plan? _____;

If yes, describe how the project complies with this plan.

Will there be stormwater runoff or discharge to the designated ACEC? ____ Yes ____ No;

If yes, describe and assess the potential impacts of such stormwater runoff/discharge to the designated ACEC.

RARE SPECIES:

Does the project site include Estimated and/or Priority Habitat of State-Listed Rare Species? (see http://www.mass.gov/dfwele/dfw/nhosp/regulatory_review/priority_habitat/priority_habitat_home.htm)

☒ Yes (Specify _____ PH 252 and EH 269 _____) ☐ No

HISTORICAL /ARCHAEOLOGICAL RESOURCES:

Does the project site include any structure, site or district listed in the State Register of Historic Place or the inventory of Historic and Archaeological Assets of the Commonwealth?

☐ Yes (Specify _____) ☒ No

If yes, does the project involve any demolition or destruction of any listed or inventoried historic or archaeological resources? ☐ Yes (Specify _____) ☐ No

WATER RESOURCES:

Is there an Outstanding Resource Water (ORW) on or within a half-mile radius of the project site? ____ Yes X No; if yes, identify the ORW and its location. _____

(NOTE: Outstanding Resource Waters include Class A public water supplies, their tributaries, and bordering wetlands; active and inactive reservoirs approved by MassDEP; certain waters within Areas of Critical Environmental Concern, and certified vernal pools. Outstanding resource waters are listed in the Surface Water Quality Standards, 314 CMR 4.00.)

Are there any impaired water bodies on or within a half-mile radius of the project site? ____ Yes X No; if yes, identify the water body and pollutant(s) causing the impairment: _____

Is the project within a medium or high stress basin, as established by the Massachusetts Water Resources Commission? ___ Yes X No

STORMWATER MANAGEMENT:

Generally describe the project's stormwater impacts and measures that the project will take to comply with the standards found in MassDEP's Stormwater Management Regulations: _____

There will be no increase in impervious area from the existing site.

MASSACHUSETTS CONTINGENCY PLAN:

Has the project site been, or is it currently being, regulated under M.G.L.c.21E or the Massachusetts Contingency Plan site (including Release Tracking Number (RTN), cleanup phase, and Response Action Outcome classification): No

Is there an Activity and Use Limitation (AUL) on any portion of the project site? Yes ___ No X ;
if yes, describe which portion of the site and how the project will be consistent with the AUL: _____

Are you aware of any Reportable Conditions at the property that have not yet been assigned an RTN?
Yes ___ No X ; if yes, please describe: _____

SOLID AND HAZARDOUS WASTE:

If the project will generate solid waste during demolition or construction, describe alternatives considered for re-use, recycling, and disposal of, e.g., asphalt, brick, concrete, gypsum, metal, wood: _____

(NOTE: Asphalt pavement, brick, concrete and metal are banned from disposal at Massachusetts landfills and waste combustion facilities and wood is banned from disposal at Massachusetts landfills. See 310 CMR 19.017 for the complete list of banned materials.)

Will your project disturb asbestos containing materials? Yes ___ No X ;
if yes, please consult state asbestos requirements at <http://mass.gov/MassDEP/air/asbhom01.htm>

Describe anti-idling and other measures to limit emissions from construction equipment: _____

No refueling of construction equipment shall be permitted in the immediate vicinity of any coastal resource areas. All equipment that is not in use for a period of 1 hour or more, will be turned off to limit emissions.

DESIGNATED WILD AND SCENIC RIVER:

Is this project site located wholly or partially within a defined river corridor of a federally designated Wild and Scenic River or a state designated Scenic River? Yes ___ No X ;
if yes, specify name of river and designation: _____

If yes, does the project have the potential to impact any of the "outstandingly remarkable" resources of a federally Wild and Scenic River or the stated purpose of a state designated Scenic River?
Yes ___ No ___ ; if yes, specify name of river and designation: _____;

if yes, will the project will result in any impacts to any of the designated "outstandingly remarkable" resources of the Wild and Scenic River or the stated purposes of a Scenic River.

Yes ___ No ___ ;

if yes, describe the potential impacts to one or more of the "outstandingly remarkable" resources or stated purposes and mitigation measures proposed.

ATTACHMENTS:

1. List of all attachments to this document.
2. U.S.G.S. map (good quality color copy, 8-½ x 11 inches or larger, at a scale of 1:24,000) indicating the project location and boundaries.
- 3.. Plan, at an appropriate scale, of existing conditions on the project site and its immediate environs, showing all known structures, roadways and parking lots, railroad rights-of-way, wetlands and water bodies, wooded areas, farmland, steep slopes, public open spaces, and major utilities.
- 4 Plan, at an appropriate scale, depicting environmental constraints on or adjacent to the project site such as Priority and/or Estimated Habitat of state-listed rare species, Areas of Critical Environmental Concern, Chapter 91 jurisdictional areas, Article 97 lands, wetland resource area delineations, water supply protection areas, and historic resources and/or districts.
5. Plan, at an appropriate scale, of proposed conditions upon completion of project (if construction of the project is proposed to be phased, there should be a site plan showing conditions upon the completion of each phase).
6. List of all agencies and persons to whom the proponent circulated the ENF, in accordance with 301 CMR 11.16(2).
7. List of municipal and federal permits and reviews required by the project, as applicable.

LAND SECTION – all proponents must fill out this section

I. Thresholds / Permits

- A. Does the project meet or exceed any review thresholds related to **land** (see 301 CMR 11.03(1))
___ Yes X No; if yes, specify each threshold:

II. Impacts and Permits

- A. Describe, in acres, the current and proposed character of the project site, as follows:

	<u>Existing</u>	<u>Change</u>	<u>Total</u>
Footprint of buildings	_____	<u>0</u>	_____
Internal roadways	_____	_____	_____
Parking and other paved areas	_____	_____	_____
Other altered areas	_____	_____	_____
Undeveloped areas	_____	_____	_____
Total: Project Site Acreage	_____	_____	_____

- B. Has any part of the project site been in active agricultural use in the last five years?
___ Yes ___ No; if yes, how many acres of land in agricultural use (with prime state or locally important agricultural soils) will be converted to nonagricultural use?
- C. Is any part of the project site currently or proposed to be in active forestry use?
___ Yes ___ No; if yes, please describe current and proposed forestry activities and indicate whether any part of the site is the subject of a forest management plan approved by the Department of Conservation and Recreation:
- D. Does any part of the project involve conversion of land held for natural resources purposes in accordance with Article 97 of the Amendments to the Constitution of the Commonwealth to any purpose not in accordance with Article 97? ___ Yes ___ No; if yes, describe:
- E. Is any part of the project site currently subject to a conservation restriction, preservation restriction, agricultural preservation restriction or watershed preservation restriction? ___
Yes ___ No; if yes, does the project involve the release or modification of such restriction?
___ Yes ___ No; if yes, describe:
- F. Does the project require approval of a new urban redevelopment project or a fundamental change in an existing urban redevelopment project under M.G.L.c.121A? ___ Yes ___ No; if yes, describe:
- G. Does the project require approval of a new urban renewal plan or a major modification of an existing urban renewal plan under M.G.L.c.121B? Yes ___ No ___; if yes, describe:

III. Consistency

- A. Identify the current municipal comprehensive land use plan
Title: _____ Date _____
- B. Describe the project's consistency with that plan with regard to:
- 1) economic development _____
 - 2) adequacy of infrastructure _____
 - 3) open space impacts _____
 - 4) compatibility with adjacent land uses _____
- C. Identify the current Regional Policy Plan of the applicable Regional Planning Agency (RPA)
RPA: _____

Title: _____ Date _____

- D. Describe the project's consistency with that plan with regard to:
- 1) economic development _____
 - 2) adequacy of infrastructure _____
 - 3) open space impacts _____

RARE SPECIES SECTION

I. Thresholds / Permits

- A. Will the project meet or exceed any review thresholds related to **rare species or habitat** (see 301 CMR 11.03(2))? ☐ Yes ☒ No; if yes, specify, in quantitative terms:

(NOTE: If you are uncertain, it is recommended that you consult with the Natural Heritage and Endangered Species Program (NHESP) prior to submitting the ENF.)

- B. Does the project require any state permits related to **rare species or habitat**? ☐ Yes ☒ No

- C. Does the project site fall within mapped rare species habitat (Priority or Estimated Habitat?) in the current Massachusetts Natural Heritage Atlas (attach relevant page)? ☒ Yes ☐ No.

See **Exhibit G**.

- D. If you answered "No" to all questions A, B and C, proceed to the **Wetlands, Waterways, and Tidelands Section**. If you answered "Yes" to either question A or question B, fill out the remainder of the Rare Species section below.

II. Impacts and Permits

- A. Does the project site fall within Priority or Estimated Habitat in the current Massachusetts Natural Heritage Atlas (attach relevant page)? ☒ Yes ☐ No. If yes,

1. Have you consulted with the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP)? ☐ Yes ☒ No; if yes, have you received a determination as to whether the project will result in the "take" of a rare species? ☐ Yes ☐ No; if yes, attach the letter of determination to this submission.

2. Will the project "take" an endangered, threatened, and/or species of special concern in accordance with M.G.L. c.131A (see also 321 CMR 10.04)? ☐ Yes ☒ No; if yes, provide a summary of proposed measures to minimize and mitigate rare species impacts

3. Which rare species are known to occur within the Priority or Estimated Habitat?

The area is designated as habitat for PH252 and EH 269, see **Exhibit G**. The species will be determined once DFW is notified of the proposed project and permit application.

4. Has the site been surveyed for rare species in accordance with the Massachusetts Endangered Species Act? ☐ Yes ☒ No

4. If your project is within Estimated Habitat, have you filed a Notice of Intent or received an Order of Conditions for this project? ☐ Yes ☒ No; if yes, did you send a copy of the Notice of Intent to the Natural Heritage and Endangered Species Program, in accordance with the Wetlands Protection Act regulations? ☐ Yes ☐ No

- B. Will the project "take" an endangered, threatened, and/or species of special concern in accordance with M.G.L. c.131A (see also 321 CMR 10.04)? ☐ Yes ☒ No; if yes, provide a summary of proposed measures to minimize and mitigate impacts to significant habitat:

WETLANDS, WATERWAYS, AND TIDELANDS SECTION

I. Thresholds / Permits

A. Will the project meet or exceed any review thresholds related to **wetlands, waterways, and tidelands** (see 301 CMR 11.03(3))? X Yes ___ No; if yes, specify, in quantitative terms: *301 CMR 11.03(3)(b)(6.) Construction, reconstruction, or expansion of an existing solid fill structure of 1,000 or more sf base area or of a pile-supported or bottom-anchored structure of 2,000 or more sf base area, except a seasonal, pile-held or bottom-anchored float, provided the structure occupies flowed tidelands or other waterways.*

B. Does the project require any state permits (or a local Order of Conditions) related to **wetlands, waterways, or tidelands**? X Yes ___ No; if yes, specify which permit:

Chapter 91

C. If you answered "No" to both questions A and B, proceed to the **Water Supply Section**. If you answered "Yes" to either question A or question B, fill out the remainder of the Wetlands, Waterways, and Tidelands Section below.

II. Wetlands Impacts and Permits

A. Does the project require a new or amended Order of Conditions under the Wetlands Protection Act (M.G.L. c.131A)? X Yes ___ No; if yes, has a Notice of Intent been filed? ___ Yes X No; if yes, list the date and MassDEP file number: _____; if yes, has a local Order of Conditions been issued? ___ Yes ___ No; Was the Order of Conditions appealed? ___ Yes ___ No. Will the project require a Variance from the Wetlands regulations? ___ Yes ___ No.

B. Describe any proposed permanent or temporary impacts to wetland resource areas located on the project site:

Impact to Land Under Ocean, Land Containing Shellfish, Land Subject to Coastal Storm Flowage.

C. Estimate the extent and type of impact that the project will have on wetland resources, and indicate whether the impacts are temporary or permanent:

<u>Coastal Wetlands</u>	<u>Area (square feet) or Length (linear feet)</u>	<u>Temporary or Permanent Impact?</u>
Land Under the Ocean	<u>58.9 SF</u>	<u>Permanent</u>
Designated Port Areas	_____	_____
Coastal Beaches	_____	_____
Coastal Dunes	_____	_____
Barrier Beaches	_____	_____
Coastal Banks	_____	_____
Rocky Intertidal Shores	_____	_____
Salt Marshes	_____	_____
Land Under Salt Ponds	_____	_____
Land Containing Shellfish	<u>58.9 SF</u>	<u>Permanent</u>
Fish Runs	_____	_____
Land Subject to Coastal Storm Flowage	_____	_____
<u>Inland Wetlands</u>		
Bank (If)	_____	_____
Bordering Vegetated Wetlands	_____	_____
Isolated Vegetated Wetlands	_____	_____
Land under Water	_____	_____
Isolated Land Subject to Flooding	_____	_____
Bordering Land Subject to Flooding	_____	_____

D. Is any part of the project:

1. proposed as a **limited project**? ____ Yes X No; if yes, what is the area (in sf)? ____
2. the construction or alteration of a **dam**? ____ Yes X No; if yes, describe:
3. fill or structure in a **velocity zone** or **regulatory floodway**? ____ Yes X No
4. dredging or disposal of dredged material? ____ Yes X No; if yes, describe the volume of dredged material and the proposed disposal site:
5. a discharge to an **Outstanding Resource Water (ORW)** or an **Area of Critical Environmental Concern (ACEC)**? ____ Yes X No
6. subject to a wetlands restriction order? ____ Yes X No; if yes, identify the area (in sf):
7. located in buffer zones? X Yes ____ No; if yes, how much (in sf) _____

E. Will the project:

1. be subject to a local wetlands ordinance or bylaw? X Yes ____ No
2. alter any federally-protected wetlands not regulated under state law? ____ Yes X No; if yes, what is the area (sf)?

III. Waterways and Tidelands Impacts and Permits

A. Does the project site contain waterways or tidelands (including filled former tidelands) that are subject to the Waterways Act, M.G.L.c.91? X Yes ____ No; if yes, is there a current Chapter 91 License or Permit affecting the project site? X Yes ____ No; if yes, list the date and license or permit number and provide a copy of the historic map used to determine extent of filled tidelands: DPW License 3784, Oct 10, 1955; DPW License 3801, Dec 12, 1955

B. Does the project require a new or modified license or permit under M.G.L.c.91? X Yes ____ No; if yes, how many acres of the project site subject to M.G.L.c.91 will be for non-water-dependent use? Current 86,249 SF Change 0 Total 86,249 SF
If yes, how many square feet of solid fill or pile-supported structures (in sf)?
86,249 SF

C. For non-water-dependent use projects, indicate the following:

Area of filled tidelands on the site: 86,249 SF

Area of filled tidelands covered by buildings: 23,260 SF

For portions of site on filled tidelands, list ground floor uses and area of each use:

Retail and proposed boat engine repair

Does the project include new non-water-dependent uses located over flowed tidelands?

Yes ____ No X

Height of building on filled tidelands 22'

Also show the following on a site plan: Mean High Water, Mean Low Water, Water-dependent Use Zone, location of uses within buildings on tidelands, and interior and exterior areas and facilities dedicated for public use, and historic high and historic low water marks.

D. Is the project located on landlocked tidelands? ____ Yes X No; if yes, describe the project's impact on the public's right to access, use and enjoy jurisdictional tidelands and describe measures the project will implement to avoid, minimize or mitigate any adverse impact:

E. Is the project located in an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations? ____ Yes X No; if yes, describe the project's impact on groundwater levels and describe measures the project will implement to avoid, minimize or mitigate any adverse impact:

F. Is the project non-water-dependent **and** located on landlocked tidelands **or** waterways or

tidelands subject to the Waterways Act **and** subject to a mandatory EIR? ___ Yes X
No;
(NOTE: If yes, then the project will be subject to Public Benefit Review and
Determination.)

G. Does the project include dredging? ___ Yes X No; if yes, answer the following questions:

What type of dredging? Improvement ___ Maintenance ___ Both ___

What is the proposed dredge volume, in cubic yards (cys) _____

What is the proposed dredge footprint ___ length (ft) ___ width (ft) ___ depth (ft);

Will dredging impact the following resource areas?

Intertidal Yes ___ No ___; if yes, ___ sq ft

Outstanding Resource Waters Yes ___ No ___; if yes, ___ sq ft

Other resource area (i.e. shellfish beds, eel grass beds) Yes ___ No ___; if yes ___
sq ft

If yes to any of the above, have you evaluated appropriate and practicable steps
to: 1) avoidance; 2) if avoidance is not possible, minimization; 3) if either
avoidance or minimize is not possible, mitigation?

If no to any of the above, what information or documentation was used to support
this determination?

Provide a comprehensive analysis of practicable alternatives for improvement dredging in
accordance with 314 CMR 9.07(1)(b). Physical and chemical data of the
sediment shall be included in the comprehensive analysis.

Sediment Characterization

Existing gradation analysis results? ___ Yes ___ No; if yes, provide results.

Existing chemical results for parameters listed in 314 CMR 9.07(2)(b)6? ___ Yes
___ No; if yes, provide results.

Do you have sufficient information to evaluate feasibility of the following management
options for dredged sediment? If yes, check the appropriate option.

Beach Nourishment ___

Unconfined Ocean Disposal ___

Confined Disposal:

Confined Aquatic Disposal (CAD) ___

Confined Disposal Facility (CDF) ___

Landfill Reuse in accordance with COMM-97-001 ___

Shoreline Placement ___

Upland Material Reuse ___

In-State landfill disposal ___

Out-of-state landfill disposal ___

(NOTE: This information is required for a 401 Water Quality Certification.)

IV. Consistency:

- A. Does the project have effects on the coastal resources or uses, and/or is the project located
within the Coastal Zone? X Yes ___ No; if yes, describe these effects and the projects
consistency with the policies of the Office of Coastal Zone Management:

The proposed project is consistent with the program policies established as a result of the Coastal Zone
Management Act of 1972. See Exhibit A for more information on the CZM policies.

- B. Is the project located within an area subject to a Municipal Harbor Plan? X Yes ___ No; if
yes, identify the Municipal Harbor Plan and describe the project's consistency with that plan:

WATER SUPPLY SECTION

I. Thresholds / Permits

A. Will the project meet or exceed any review thresholds related to **water supply** (see 301 CMR 11.03(4))? ___ Yes X No; if yes, specify, in quantitative terms:

B. Does the project require any state permits related to **water supply**? ___ Yes X No; if yes, specify which permit:

C. If you answered "No" to both questions A and B, proceed to the **Wastewater Section**. If you answered "Yes" to either question A or question B, fill out the remainder of the Water Supply Section below.

II. Impacts and Permits

A. Describe, in gallons per day (gpd), the volume and source of water use for existing and proposed activities at the project site:

	<u>Existing</u>	<u>Change</u>	<u>Total</u>
Municipal or regional water supply	_____	_____	_____
Withdrawal from groundwater	_____	_____	_____
Withdrawal from surface water	_____	_____	_____
Interbasin transfer	_____	_____	_____

(NOTE: Interbasin Transfer approval will be required if the basin and community where the proposed water supply source is located is different from the basin and community where the wastewater from the source will be discharged.)

B. If the source is a municipal or regional supply, has the municipality or region indicated that there is adequate capacity in the system to accommodate the project? ___ Yes ___ No

C. If the project involves a new or expanded withdrawal from a groundwater or surface water source, has a pumping test been conducted? ___ Yes ___ No; if yes, attach a map of the drilling sites and a summary of the alternatives considered and the results. _____

D. What is the currently permitted withdrawal at the proposed water supply source (in gallons per day)? _____ Will the project require an increase in that withdrawal? ___ Yes ___ No; if yes, then how much of an increase (gpd)? _____

E. Does the project site currently contain a water supply well, a drinking water treatment facility, water main, or other water supply facility, or will the project involve construction of a new facility? ___ Yes ___ No. If yes, describe existing and proposed water supply facilities at the project site:

	<u>Permitted Flow</u>	<u>Existing Avg Daily Flow</u>	<u>Project Flow</u>	<u>Total</u>
Capacity of water supply well(s) (gpd)	_____	_____	_____	_____
Capacity of water treatment plant (gpd)	_____	_____	_____	_____

F. If the project involves a new interbasin transfer of water, which basins are involved, what is the direction of the transfer, and is the interbasin transfer existing or proposed?

G. Does the project involve:

1. new water service by the Massachusetts Water Resources Authority or other agency of the Commonwealth to a municipality or water district? ___ Yes ___ No
2. a Watershed Protection Act variance? ___ Yes ___ No; if yes, how many acres of alteration?
3. a non-bridged stream crossing 1,000 or less feet upstream of a public surface drinking

water supply for purpose of forest harvesting activities? ____ Yes ____ No

III. Consistency

Describe the project's consistency with water conservation plans or other plans to enhance water resources, quality, facilities and services:

WASTEWATER SECTION

I. Thresholds / Permits

A. Will the project meet or exceed any review thresholds related to **wastewater** (see 301 CMR 11.03(5))? ___ Yes X No; if yes, specify, in quantitative terms:

B. Does the project require any state permits related to **wastewater**? ___ Yes X No; if yes, specify which permit:

C. If you answered "No" to both questions A and B, proceed to the **Transportation -- Traffic Generation Section**. If you answered "Yes" to either question A or question B, fill out the remainder of the Wastewater Section below.

II. Impacts and Permits

A. Describe the volume (in gallons per day) and type of disposal of wastewater generation for existing and proposed activities at the project site (calculate according to 310 CMR 15.00 for septic systems or 314 CMR 7.00 for sewer systems):

	<u>Existing</u>	<u>Change</u>	<u>Total</u>
Discharge of sanitary wastewater	_____	_____	_____
Discharge of industrial wastewater	_____	_____	_____
TOTAL	_____	_____	_____
	<u>Existing</u>	<u>Change</u>	<u>Total</u>
Discharge to groundwater	_____	_____	_____
Discharge to outstanding resource water	_____	_____	_____
Discharge to surface water	_____	_____	_____
Discharge to municipal or regional wastewater facility	_____	_____	_____
TOTAL	_____	_____	_____

B. Is the existing collection system at or near its capacity? ___ Yes ___ No; if yes, then describe the measures to be undertaken to accommodate the project's wastewater flows:

C. Is the existing wastewater disposal facility at or near its permitted capacity? ___ Yes ___ No; if yes, then describe the measures to be undertaken to accommodate the project's wastewater flows:

D. Does the project site currently contain a wastewater treatment facility, sewer main, or other wastewater disposal facility, or will the project involve construction of a new facility? ___ Yes ___ No; if yes, describe as follows:

	<u>Permitted</u>	<u>Existing Avg Daily Flow</u>	<u>Project Flow</u>	<u>Total</u>
Wastewater treatment plant capacity (in gallons per day)	_____	_____	_____	_____

E. If the project requires an interbasin transfer of wastewater, which basins are involved, what is the direction of the transfer, and is the interbasin transfer existing or new?

(NOTE: Interbasin Transfer approval may be needed if the basin and community where wastewater will be discharged is different from the basin and community where the source of water supply is located.)

F. Does the project involve new sewer service by the Massachusetts Water Resources Authority (MWRA) or other Agency of the Commonwealth to a municipality or sewer district? ____ Yes ____ No

G. Is there an existing facility, or is a new facility proposed at the project site for the storage, treatment, processing, combustion or disposal of sewage sludge, sludge ash, grit, screenings, wastewater reuse (gray water) or other sewage residual materials? ____ Yes ____ No; if yes, what is the capacity (tons per day):

	<u>Existing</u>	<u>Change</u>	<u>Total</u>
Storage	_____	_____	_____
Treatment	_____	_____	_____
Processing	_____	_____	_____
Combustion	_____	_____	_____
Disposal	_____	_____	_____

H. Describe the water conservation measures to be undertaken by the project, and other wastewater mitigation, such as infiltration and inflow removal.

III. Consistency

A. Describe measures that the proponent will take to comply with applicable state, regional, and local plans and policies related to wastewater management:

B. If the project requires a sewer extension permit, is that extension included in a comprehensive wastewater management plan? ____ Yes ____ No; if yes, indicate the EEA number for the plan and whether the project site is within a sewer service area recommended or approved in that plan:

TRANSPORTATION SECTION (TRAFFIC GENERATION)

I. Thresholds / Permit

A. Will the project meet or exceed any review thresholds related to **traffic generation** (see 301 CMR 11.03(6))? ____ Yes X No; if yes, specify, in quantitative terms:

B. Does the project require any state permits related to **state-controlled roadways**? ____ Yes X No; if yes, specify which permit:

C. If you answered "No" to both questions A and B, proceed to the **Roadways and Other Transportation Facilities Section**. If you answered "Yes" to either question A or question B, fill out the remainder of the Traffic Generation Section below.

II. Traffic Impacts and Permits

A. Describe existing and proposed vehicular traffic generated by activities at the project site:

	<u>Existing</u>	<u>Change</u>	<u>Total</u>
Number of parking spaces	_____	_____	_____
Number of vehicle trips per day	_____	_____	_____
ITE Land Use Code(s):	_____	_____	_____

B. What is the estimated average daily traffic on roadways serving the site?

<u>Roadway</u>	<u>Existing</u>	<u>Change</u>	<u>Total</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

C. If applicable, describe proposed mitigation measures on state-controlled roadways that the project proponent will implement:

D. How will the project implement and/or promote the use of transit, pedestrian and bicycle facilities and services to provide access to and from the project site?

C. Is there a Transportation Management Association (TMA) that provides transportation demand management (TDM) services in the area of the project site? ____ Yes ____ No; if yes, describe if and how will the project will participate in the TMA:

D. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation facilities? ____ Yes ____ No; if yes, generally describe:

E. If the project will penetrate approach airspace of a nearby airport, has the proponent filed a Massachusetts Aeronautics Commission Airspace Review Form (780 CMR 111.7) and a Notice of Proposed Construction or Alteration with the Federal Aviation Administration (FAA) (CFR Title 14 Part 77.13, forms 7460-1 and 7460-2)?

III. Consistency

Describe measures that the proponent will take to comply with municipal, regional, state, and federal plans and policies related to traffic, transit, pedestrian and bicycle transportation facilities and services:

TRANSPORTATION SECTION (ROADWAYS AND OTHER TRANSPORTATION FACILITIES)

I. Thresholds

A. Will the project meet or exceed any review thresholds related to **roadways or other transportation facilities** (see 301 CMR 11.03(6))? ____ Yes X No; if yes, specify, in quantitative terms:

B. Does the project require any state permits related to **roadways or other transportation facilities**? ____ Yes X No; if yes, specify which permit:

C. If you answered "No" to both questions A and B, proceed to the **Energy Section**. If you answered "Yes" to either question A or question B, fill out the remainder of the Roadways Section below.

II. Transportation Facility Impacts

A. Describe existing and proposed transportation facilities in the immediate vicinity of the project site:

B. Will the project involve any

1. Alteration of bank or terrain (in linear feet)? _____

2. Cutting of living public shade trees (number)? _____

3. Elimination of stone wall (in linear feet)? _____

III. Consistency -- Describe the project's consistency with other federal, state, regional, and local plans and policies related to traffic, transit, pedestrian and bicycle transportation facilities and services, including consistency with the applicable regional transportation plan and the Transportation Improvements Plan (TIP), the State Bicycle Plan, and the State Pedestrian Plan:

ENERGY SECTION

I. Thresholds / Permits

A. Will the project meet or exceed any review thresholds related to **energy** (see 301 CMR 11.03(7))?
___ Yes X No; if yes, specify, in quantitative terms:

B. Does the project require any state permits related to **energy**? ___ Yes X No; if yes, specify which permit:

C. If you answered "No" to both questions A and B, proceed to the **Air Quality Section**. If you answered "Yes" to either question A or question B, fill out the remainder of the Energy Section below.

II. Impacts and Permits

A. Describe existing and proposed energy generation and transmission facilities at the project site:

	<u>Existing</u>	<u>Change</u>	<u>Total</u>
Capacity of electric generating facility (megawatts)	_____	_____	_____
Length of fuel line (in miles)	_____	_____	_____
Length of transmission lines (in miles)	_____	_____	_____
Capacity of transmission lines (in kilovolts)	_____	_____	_____

B. If the project involves construction or expansion of an electric generating facility, what are:

1. the facility's current and proposed fuel source(s)?
2. the facility's current and proposed cooling source(s)?

C. If the project involves construction of an electrical transmission line, will it be located on a new, unused, or abandoned right of way? ___Yes ___No; if yes, please describe:

D. Describe the project's other impacts on energy facilities and services:

III. Consistency

Describe the project's consistency with state, municipal, regional, and federal plans and policies for enhancing energy facilities and services:

AIR QUALITY SECTION

I. Thresholds

A. Will the project meet or exceed any review thresholds related to **air quality** (see 301 CMR 11.03(8))? ___ Yes X No; if yes, specify, in quantitative terms:

B. Does the project require any state permits related to **air quality**? ___ Yes X No; if yes, specify which permit:

C. If you answered "No" to both questions A and B, proceed to the **Solid and Hazardous Waste Section**. If you answered "Yes" to either question A or question B, fill out the remainder of the Air Quality Section below.

II. Impacts and Permits

A. Does the project involve construction or modification of a major stationary source (see 310 CMR 7.00, Appendix A)? ___ Yes ___ No; if yes, describe existing and proposed emissions (in tons per day) of:

	<u>Existing</u>	<u>Change</u>	<u>Total</u>
Particulate matter	_____	_____	_____
Carbon monoxide	_____	_____	_____
Sulfur dioxide	_____	_____	_____
Volatile organic compounds	_____	_____	_____
Oxides of nitrogen	_____	_____	_____
Lead	_____	_____	_____
Any hazardous air pollutant	_____	_____	_____
Carbon dioxide	_____	_____	_____

B. Describe the project's other impacts on air resources and air quality, including noise impacts:

III. Consistency

A. Describe the project's consistency with the State Implementation Plan:

B. Describe measures that the proponent will take to comply with other federal, state, regional, and local plans and policies related to air resources and air quality:

SOLID AND HAZARDOUS WASTE SECTION

I. Thresholds / Permits

A. Will the project meet or exceed any review thresholds related to **solid or hazardous waste** (see 301 CMR 11.03(9))? ____ Yes X No; if yes, specify, in quantitative terms:

B. Does the project require any state permits related to **solid and hazardous waste**? ____ Yes X No; if yes, specify which permit:

C. If you answered "No" to both questions A and B, proceed to the **Historical and Archaeological Resources Section**. If you answered "Yes" to either question A or question B, fill out the remainder of the Solid and Hazardous Waste Section below.

II. Impacts and Permits

A. Is there any current or proposed facility at the project site for the storage, treatment, processing, combustion or disposal of solid waste? ____ Yes ____ No; if yes, what is the volume (in tons per day) of the capacity:

	<u>Existing</u>	<u>Change</u>	<u>Total</u>
Storage	_____	_____	_____
Treatment, processing	_____	_____	_____
Combustion	_____	_____	_____
Disposal	_____	_____	_____

B. Is there any current or proposed facility at the project site for the storage, recycling, treatment or disposal of hazardous waste? ____ Yes ____ No; if yes, what is the volume (in tons or gallons per day) of the capacity:

	<u>Existing</u>	<u>Change</u>	<u>Total</u>
Storage	_____	_____	_____
Recycling	_____	_____	_____
Treatment	_____	_____	_____
Disposal	_____	_____	_____

C. If the project will generate solid waste (for example, during demolition or construction), describe alternatives considered for re-use, recycling, and disposal:

D. If the project involves demolition, do any buildings to be demolished contain asbestos?
____ Yes ____ No

E. Describe the project's other solid and hazardous waste impacts (including indirect impacts):

III. Consistency

Describe measures that the proponent will take to comply with the State Solid Waste Master Plan:

HISTORICAL AND ARCHAEOLOGICAL RESOURCES SECTION

I. Thresholds / Impacts

A. Have you consulted with the Massachusetts Historical Commission? ____ Yes X No; if yes, attach correspondence. For project sites involving lands under water, have you consulted with the Massachusetts Board of Underwater Archaeological Resources? ____ Yes X No; if yes, attach correspondence

B. Is any part of the project site a historic structure, or a structure within a historic district, in either case listed in the State Register of Historic Places or the Inventory of Historic and Archaeological Assets of the Commonwealth? ____ Yes X No; if yes, does the project involve the demolition of all or any exterior part of such historic structure? ____ Yes ____ No; if yes, please describe:

C. Is any part of the project site an archaeological site listed in the State Register of Historic Places or the Inventory of Historic and Archaeological Assets of the Commonwealth? ____ Yes X No; if yes, does the project involve the destruction of all or any part of such archaeological site? ____ Yes ____ No; if yes, please describe:

D. If you answered "No" to all parts of both questions A, B and C, proceed to the **Attachments and Certifications** Sections. If you answered "Yes" to any part of either question A or question B, fill out the remainder of the Historical and Archaeological Resources Section below.

II. Impacts

Describe and assess the project's impacts, direct and indirect, on listed or inventoried historical and archaeological resources:

III. Consistency

Describe measures that the proponent will take to comply with federal, state, regional, and local plans and policies related to preserving historical and archaeological resources:

CERTIFICATIONS:

1. The Public Notice of Environmental Review has been/will be published in the following newspapers in accordance with 301 CMR 11.15(1):

(Name) _____ (Date) _____

2. This form has been circulated to Agencies and Persons in accordance with 301 CMR 11.16(2).

Signatures:

8/15/2019

Date Signature of Responsible Officer
or Proponent

8/15/2019

Date Signature of person preparing
ENF (if different from above)

Susan Nilson

Name (print or type)

Name (print or type)

Cooke Island Realty, LLC

Foth Infrastructure & Environmental

Firm/Agency

Firm/Agency

23 Popes Island

15 Creek Road

Street

Street

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Marion, MA 02738

Municipality/State/Zip

Municipality/State/Zip

(508) 980-9138

(508) 748-0937

Phone

Phone

Table of Exhibits

Exhibit A	Project Narrative
Exhibit B	USGS Locus Map
Exhibit C	Assessor's Card and Parcel Map
Exhibit D	FEMA (FIRM) Map
Exhibit E	Historic High Tide Line Graphic
Exhibit F	Department of Public Works License Plans [No. 3784, 3801, & 3828]
Exhibit G	Site Photographs
Exhibit H	Project Drawings "To License and Maintain Existing Fill, Building, Proposed Pile Anchored Barges, Reconfiguration Zone, and Gangway", prepared for Fairhaven Shipyard Companies, LLC by Foth-CLE Engineering, Inc., Revise Date August 2019, 3 Sheets
Exhibit I	NHESP Priority & Estimated Habitats Map
Exhibit J	List of applicable Regulatory Review

Exhibit A

Project Narrative

Project background and Proposed Project Description

The project site is located at 23 Popes Island (see **Exhibit B**) (Assessor's Map 60, Lot 20, **Exhibit C**) and within New Bedford Harbor/Acushnet River. The project is located within FEMA Flood Zone AE (EL. 6' NAVD88) and Zone X (reduced risk), Map #25005C0393G dated July 16, 2014 for Bristol County (**Exhibit D**). The proposed project includes permitting existing fill into compliance, revitalization of an existing building, a reconfiguration zone, two (2) pile anchored barges, one (1) gangway to the barges, and one (1) concrete pad for the gangway. The entire property is located seaward of the historic high tide line (**Exhibit E**) and therefore in Chapter 91 jurisdiction.

The solid fill on the property was licensed by DPW Lic No. 3828 (**Exhibit F**). The fill was licensed to el. 10' MLW (8.2' NAVD88) with a seawall extending to el. 13.5' MLW (11.7' NAVD88). According to the survey performed by Nitsch Engineering, Inc. on May 16th and 21st of 2018, the height of fill ranges from 7' to 13' NAVD88 while the crest of the existing seawall is approximately 5' NAVD88.

Based upon site survey and site observations, as shown in the attached photos, additional fill was placed above the authorized fill elevation prior to building construction and is not in compliance with the existing license. The intent of this license application is to authorize the additional fill on the property as well as the concrete support slab to a gangway, pile-supported barges, and a delineated reconfiguration zone.

The existing building, which was originally occupied by True Value Hardware and classified as a general retail style building, is proposed to serve as an parts department for the Fairhaven Shipyard. The building will include a retail component and engine repair shop. The barges will be approximately 50' x 250' in overall width and length for 12,500 square feet (SF) size supported by 12 piles at 30" diameter (58.9 SF). The barges will be accessed from shore by one heavy-duty gangway from a concrete support slab on the existing solid fill structure. The barges are proposed within a proposed reconfiguration zone, to allow for flexibility in barge locations based on Shipyard needs.

Coastal Resource Areas and Regulations:

The resource areas affected by the proposed project include:

- Land Under Ocean (310 CMR 10.25)
- Land Containing Shellfish (310 CMR 10.34)

The following paragraphs presented below provide definitions of coastal resource areas that will be affected by the proposed project, a description of the proposed work to occur within each resource area and how the project meets performance standards.

- ❖ Pursuant to 310 CMR 10.25, **LAND UNDER OCEAN (LUO)** means land existing from the mean low water line seaward to the boundary of the municipalities' jurisdiction and includes land under estuaries. Land under ocean provides feeding areas, spawning and nursery grounds and

shelter for many coastal organisms related to marine fisheries. Near shore areas of land under the ocean also provide important food for birds.

The project impact area located within LUO is approximately 13,404 SF; this includes:

- Barges (12,500 SF)
- (12) Spud Piles (58.9 SF)
- Elevated Gangway (845 SF)

The project impact to the Buffer to the LUO is approximately 400 SF for the concrete pad landing for the gangway.

- Concrete Pad for Gangway (400 SF)

The proposed project meets the performance standards for LUO as follows:

- (3) The proposed project does not include dredging for navigational purposes at this time.
- (4) The proposed project does not include maintenance dredging at this time.
- (5) The proposed project only has slight disturbance of the LUO with installation of the piles and the topography is not anticipated to change due to the project.
- (6) The proposed project uses best available measures to reduce impact to the marine fisheries habitat in the following areas:
 - a) Water circulation: The spud piles and barges will have a minimal impact on water circulation in the area. The barge is set on piles, and will not bottom out, therefore allowing water circulation under the barges. The spud piles take up less than 60 SF over an area greater than 25,000 SF, therefore having minimal adverse impact to the water circulation.
 - b) Eelgrass: There is no eelgrass habitat in the proposed project area.
 - c) Distribution of sediment grain size: The project will have no impact on sediment grain size distribution in the area. There is no proposed dredging or fill within the water column.
 - d) Water quality: There will be temporary impacts to water quality during construction due to the turbidity when positioning barges and driving piles.
 - e) Polychaetes, Mollusks, or Macrophytic Algae habitat: The piles often attract benthic species which provide a source of food and habitat for sea life. With minimal disturbance to the LUO, there should be minimal to no disturbance to polychaetes, mollusks, or macrophytic algae habitat.

- ❖ Pursuant to 310 CMR 10.34, **LAND CONTAINING SHELLFISH** means land under the ocean, tidal flats, rocky intertidal shores, salt marshes and land under salt ponds when any such land contains shellfish.

According to the most current available MA GIS data pertaining to MA DMF mapped suitable shellfish habitat, the proposed construction activities may be located within Land Containing Shellfish (LCS), of which may include the American Oyster and Quahogs. The project impact area located within land containing shellfish is approximately 13,385 SF; this includes:

- (2) Barges (12,500 SF)
- (8) Spud Piles (9.82 SF)
- Elevated Gangway (845 SF)

It is noted that areas mapped by MA DMF include sites where shellfish have historically been sighted, but may not currently support any shellfish. The shellfish suitability areas were not verified in the field and the boundaries were not surveyed by Foth-CLE.

Project Alternatives

The following alternatives were reviewed as potential projects with viability in the area of the proposed project.

Alternative 1

Alternative 1 is the no action or no build alternative. This alternative still includes requesting the license for the existing unauthorized fill, but would not include the request to add the pile-supported barges, gangway, or concrete support slab.

This alternative would not increase or decrease the overall habitat or resource area impact. Though there is no resource area impact this alternative does not meet the project goals and is not the preferred alternative.

Alternative 2

Alternative 2 includes constructing a pile-supported pier within the proposed project footprint. The pile-supported pier is the alternative to placing the concrete slab, gangway, and pile-supported barges within a reconfiguration zone. The pier would have greater impact to the resource areas based on the need for the pier to be permanently pile-supported and not a structure that can be removed when necessary.

This alternative does not meet the project needs as the pile-supported pier is permanent in location and cannot be adjusted within a reconfiguration zone to assist in on-going changing needs of the shipyard. The barges and pile-supported pier will have the same initial impact during construction with the need to drive the piles. The pile supported pier will then remain in the location it is constructed whereas the barges can be removed from the area if necessary, or the barges can be reduced in size more readily than a permanent pile-supported pier.

Alternative 2 has the temporary turbidity impacts during construction and minimal permanent impacts based on only having piles on the Land Under Ocean (LUO). The piles reduce the LUO space minimally, if they are 30" diameter piles (same as preferred alternative), it is less than 10 SF of impact area. Piles have been shown to support shellfish habitat, and therefore should not have an adverse impact to the shellfish habitat. The pile-supported pier continues to allow water circulation, and after construction is complete, there are no permanent impacts to water quality.

This alternative was not considered further as it does not meet all the project needs of mobility and has greater permanent impact to the resource areas.

Alternative 3

Alternative 3 is to construct a solid fill bulkhead as a continuation of the existing structures on-site. The solid fill bulkhead would be located where the proposed gangway and barges are located. The solid fill bulkhead would extend the 70 foot gangway length plus the 500 linear feet of barge for a total length of 570 linear feet by a width of 50 feet for consistent width in the design. This alternative would have a solid fill impact area just larger than the proposed gangway and barge impact area due to the consistent width in the solid fill design. The overall impact area would be 28,500 square feet (SF), or approximately 3,400 SF more than the proposed gangway and barge impact area.

During construction the impact to the LUO would be greater than the permanent impact described above, though it would only be temporary. The temporary impacts include turbidity during the driving of the sheet pile for the bulkhead. Another impact would be the hauling in of the material to be used for fill. This fill could be brought in by water with barges, or over land with trucks. The hauling by trucks or barge could lead to stress on the roadway or in the river with the amount of material needed to construct the solid fill. The solid fill leaves no LUO for shellfish species and removes all water circulation in the area. Barges in the same location would still allow water circulation and shellfish habitat on the riverbed as well as shell fish that may attach to the barge. There should be no permanent adverse impact to the water quality from alternative 3 as once construction is complete, and turbidity settles, there is no further disturbance to the water.

Alternative 3 would support the project goals though it would not be able to be reconfigured or reduced in size as the preferred barges can be revised with a change in the needs of the shipyard, and alternative 3 has a greater impact area than the preferred alternative, therefore this alternative did not move forward.

Alternative 4

Alternative 4 includes a floating dock system in place of the proposed gangway and barges. The floating dock system would include the gangway as preferred alternative, but at the end of the gangway would be a set of floats with piles similar to the preferred alternative. The *proposed* use is a shipyard with industrial use. Industrial uses include heavy equipment and materials which have a much greater load than recreational or commercial purposes that the majority of where floating docks are used. Floating docks are viable with many personal property uses and some commercial recreational uses, and not typically viable with the loads of marine industrial use.

The impact of the floating docks on the resource areas is similar to the impact of the preferred project as the floating docks will have a gangway and they will be pile-supported. The floating docks can be maneuvered more readily than the solid filled bulkhead or the pile-supported pier. The construction impacts and permanent impacts to the resource area will be the same as the preferred alternative.

Due to the industrial use of the project, alternative 4 does not meet the project goals and was not reviewed further.

Coastal Zone Management Policy Consistency

COASTAL HAZARD POLICY #1:

Preserve, protect, restore, and enhance the beneficial functions of storm damage prevention and flood control provided by natural coastal landforms, such as dunes, beaches, barrier beaches, coastal banks, land subject to coastal storm flowage, salt marshes, and land under the ocean.

Within land under ocean, the project includes the barges and piles. It is anticipated that the proposed project will not adversely affect the resource area's abilities to perform their functions, as there are no changes made to any natural coastal landforms.

COASTAL HAZARD POLICY #2:

Ensure that construction in water bodies and contiguous land areas will minimize interference with water circulation and sediment transport. Flood or erosion control projects must demonstrate no significant adverse effects on the project site or adjacent or downcoast areas.

Construction of the proposed project is not anticipated to interfere with water circulation. The barges are pile supported, which minimizes interference with water circulation and sediment transportation.

HABITAT POLICY #1:

Protect coastal, estuarine, and marine habitats—including salt marshes, shellfish beds, submerged aquatic vegetation, dunes, beaches, barrier beaches, banks, salt ponds, eelgrass beds, tidal flats, rocky shores, bays, sounds, and other ocean habitats—and coastal freshwater streams, ponds, and wetlands to preserve critical wildlife habitat and other important functions and services including nutrient and sediment attenuation, wave and storm damage protection, and landform movement and processes.

A portion of the project is on land under ocean. The project has been designed to minimize impacts by having the barges pile supported, therefore marine life can continue to navigate in the proposed project area. The proposed project does not remove marine habitat.

PORTS AND HARBORS POLICY #4:

For development on tidelands and other coastal waterways, preserve and enhance the immediate waterfront for vessel-related activities that require sufficient space and suitable facilities along the water's edge for operational purposes.

The proposed project will help utilize the land in order to maintain waterfront infrastructure necessary to support maritime activities.

PORTS AND HARBORS POLICY #5:

Encourage, through technical and financial assistance, expansion of water-dependent uses in Designated Port Areas and developed harbors, re-development of urban waterfronts, and expansion of physical and visual access.

The proposed project is water dependent and will improve the boating facility's ability to provide access to navigable waters, as well as enhance the ability to provide vital services to maritime users in this developed harbor.

Harbor Management Plan Consistency

The proposed project is consistent with the New Bedford/Fairhaven Municipal Harbor Plan (The Plan). The Plan includes the subject property as being located within a Designated Port Area, and as a Marine Terminal location. The proposed project use is consistent with this designation.

23 Popes Island
New Bedford, MA 02740
July 2019

Exhibit B

USGS Locus Map

23 Popes Island
New Bedford, MA 02740
July 2019

Exhibit C

Assessor's Property Card and Parcel Map

Location: 23 POPES ISLAND**Parcel ID:** 60 20**Zoning:** IA**Fiscal Year:** 2019**Current Owner Information:**
POPES ISLAND REALTY ASSOCIAT

23 POPES ISLAND

NEW BEDFORD , MA 02740

Current Sales Information:**Sale Date:**

07/19/2000

Sale Price:

\$900,000.00

Card No. 1 of 1

Legal Reference:

4732-147

Grantor:

CHANDLER ROBERT E,

This Parcel contains 1.980 acres of land mainly classified for assessment purposes as BLDG SP + EQ with a(n) GENERAL RETAIL style building, built about 1955, having Conc Blk exterior, Rubber Sheathing roof cover and 23260 Square Feet, with 1 unit(s), total room(s), total bedroom(s) 0 total bath(s), 0 3/4 baths, and 3 total half bath(s).

Building Value:

616900

Land Value:

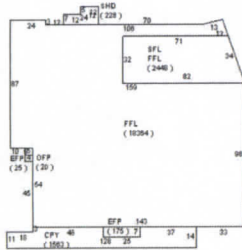
438000

Yard Items Value:

45200

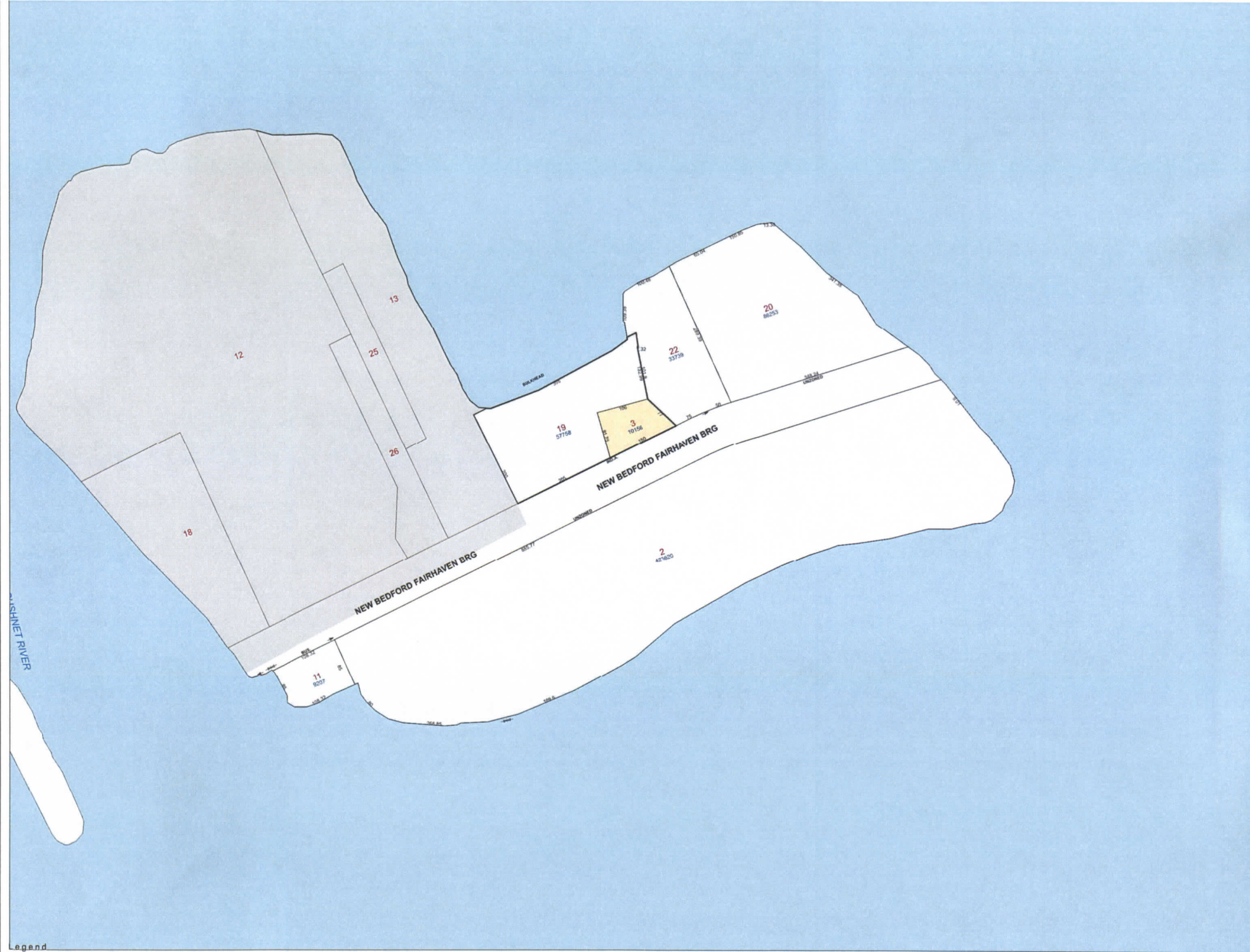
Total Value:

1100100

**Fiscal Year 2019****Fiscal Year 2018****Fiscal Year 2017**

Tax Rate Res.:	16.47	Tax Rate Res.:	16.63	Tax Rate Res.:	16.69
Tax Rate Com.:	34.84	Tax Rate Com.:	35.65	Tax Rate Com.:	36.03
Property Code:	321	Property Code:	321	Property Code:	321
Total Bldg Value:	616900	Total Bldg Value:	599300	Total Bldg Value:	538600
Total Yard Value:	45200	Total Yard Value:	45200	Total Yard Value:	45200
Total Land Value:	438000	Total Land Value:	438000	Total Land Value:	438000
Total Value:	1100100	Total Value:	1082500	Total Value:	1021800
Tax:	\$38,327.48	Tax:	\$38,591.13	Tax:	\$36,815.45

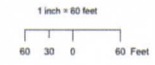
Disclaimer: Classification is not an indication of uses allowed under city zoning.
This information is believed to be correct but is subject to change and is not warranted.



Legend

- Easement
- Planned Subdivision
- Combined Parcels
- Master Parcel Linking to Assessing DB

- Water Bodies
- Town Boundary
- Text Engineering Lot Number
- Text 1st Area



City of New Bedford
Massachusetts

Map: **060-2**

Fiscal Year 2019
This parcel map should be used for planning
and assessment purposes only.



Map Produced By:
City of New Bedford
Department of
Management Information Systems

Exhibit E

Historic High Tide Line Graphic



23 Pope's Island

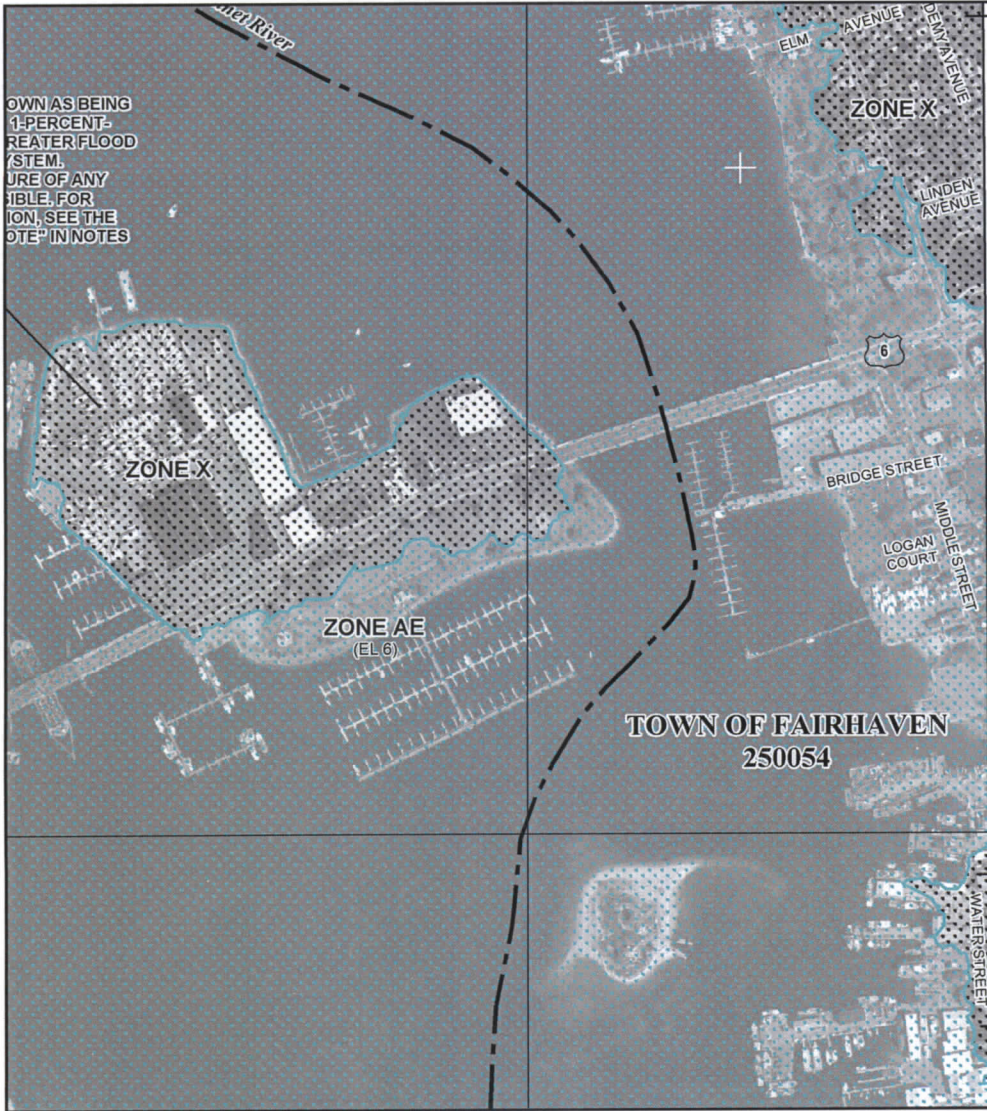
[Zoom to a town](#)

0 m

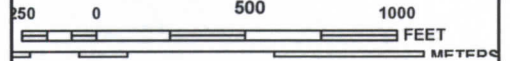
23 Popes Island
New Bedford, MA 02740
July 2019

Exhibit D

FEMA (FIRM) Map



MAP SCALE 1" = 500'



NFIP

NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0393G

FIRM

FLOOD INSURANCE RATE MAP
BRISTOL COUNTY,
MASSACHUSETTS
(ALL JURISDICTIONS)

PANEL 393 OF 550
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINING:

COMMUNITY	NUMBER	PANEL	SUFFIX
FAIRHAVEN, TOWN OF	250054	0393	G
NEW BEDFORD, CITY OF	255216	0393	G

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER
25005C0393G

MAP REVISED
JULY 16, 2014

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

23 Popes Island
New Bedford, MA 02740
July 2019

Exhibit F

Department of Public Works License Plans [No. 3784, 3801, & 3828]

51-31



SEPTEMBER 1955

John W. Lee
Fred B. Dale
James L. Lutz
Walter J. Smith

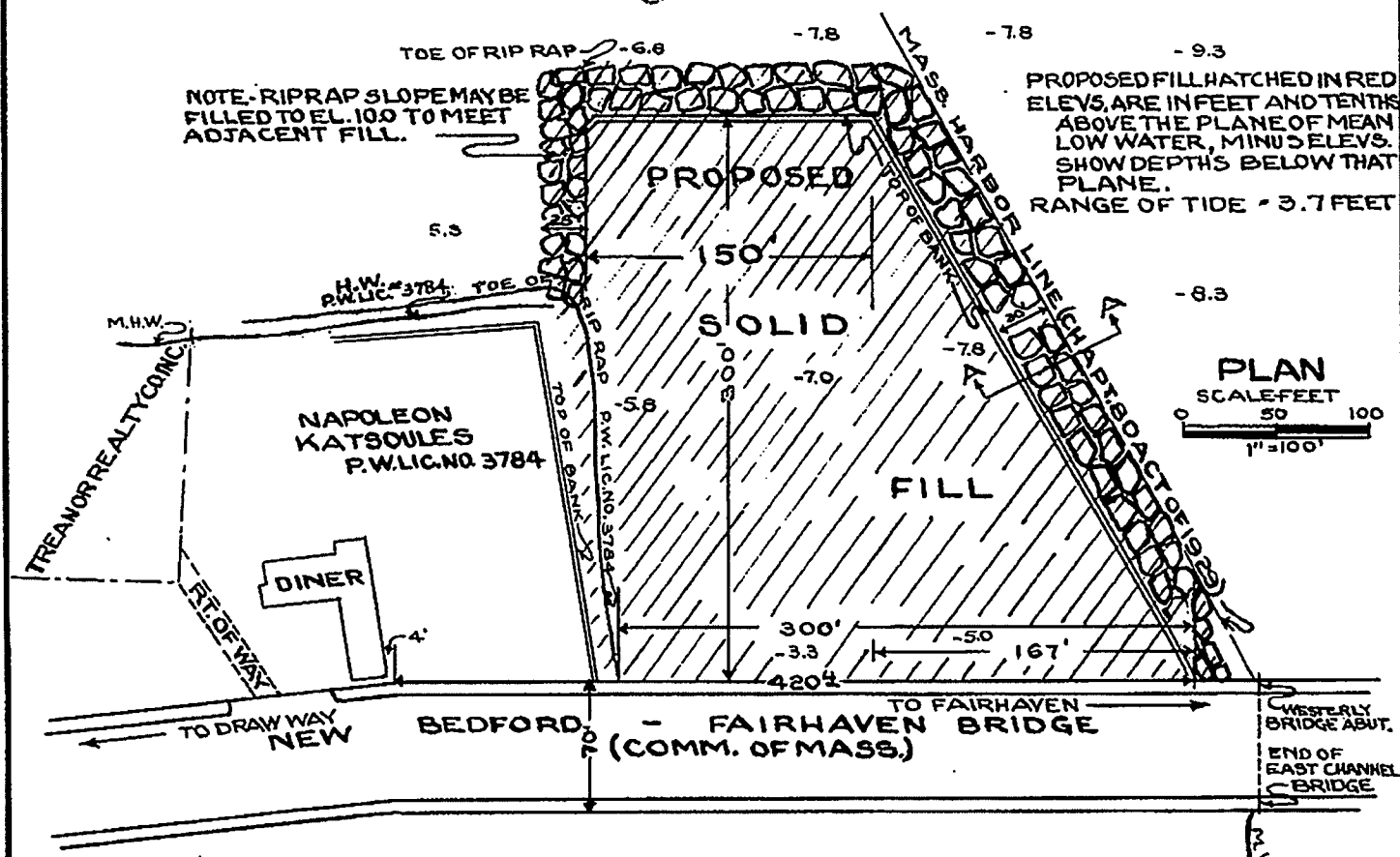
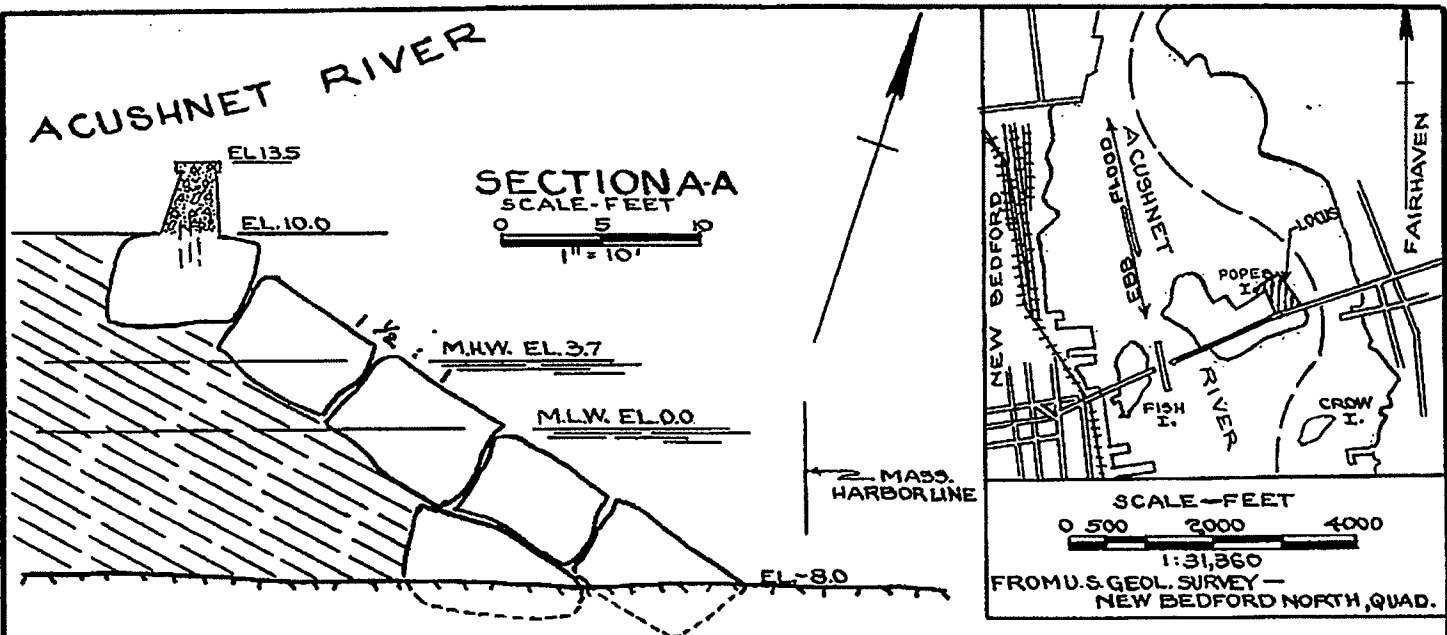
COMMISSIONER OF
PUBLIC WORKS

ASSOCIATE
COMMISSIONERS

DIRECTOR-DIVISION
OF WATERWAYS

51-31

51-46



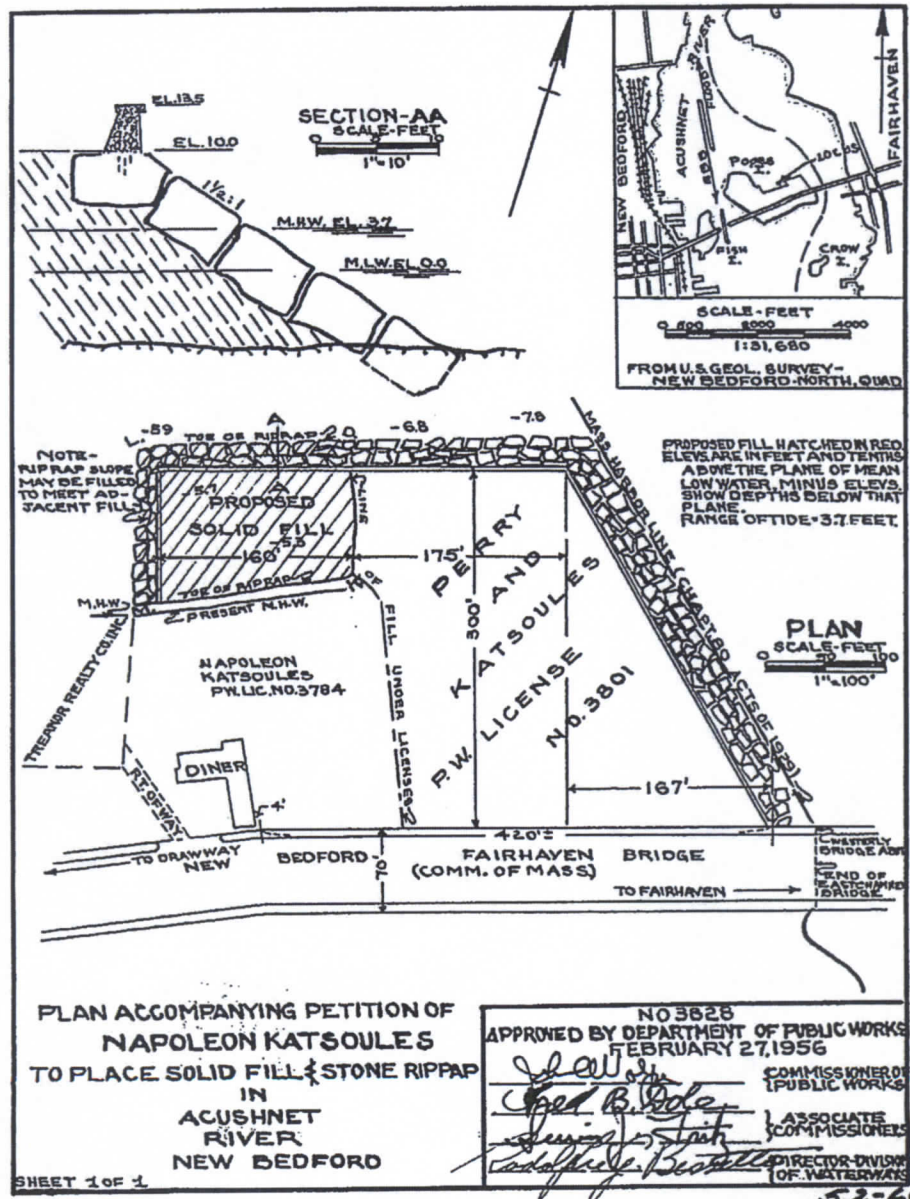
PLAN ACCOMPANYING PETITION OF
JOSEPH PERRY
 AND
NAPOLEON KATSOULES
 TO PLACE SOLID FILL WITH STONE RIPRAP SLOPES
 IN
ACUSHNET RIVER
NEW BEDFORD
 SHEET 1 OF 1
 NOVEMBER, 1955

NO 3801
 APPROVED BY DEPARTMENT OF PUBLIC WORKS
 DECEMBER 12, 1955
H. Gordon Gray ACTING COMMISSIONER OF PUBLIC WORKS
Ed B. Dole ASSOCIATE COMMISSIONERS
Benjamin F. Smith
Codephs G. D. Smith DIRECTOR DIVISION OF WATERWAYS

51-46

52-60

52-60



23 Popes Island
New Bedford, MA 02740
July 2019

Exhibit G

Site Photographs



Photo 1. Existing building (former Fairhaven Hardware) and parking lot.



Photo 2. Existing Fill.



Photo 3. Front side, Fairhaven True Value Hardware.



Photo 4. Project shoreline.

23 Popes Island
New Bedford, MA 02740
July 2019

Exhibit H

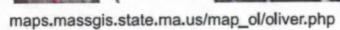
Project Drawings "To License and Maintain Existing Fill, Building, Proposed Pile Anchored Barges, Reconfiguration Zone, and Gangway", prepared for Cooke Island Realty, LLC by Foth-CLE Engineering, Inc., Revision Date August 2019, 3 Sheets

23 Popes Island
New Bedford, MA 02740
July 2019

Exhibit I

NHESP Priority Habitats Map & NHESP Estimated Habitats Map

23 Popes Island rd, new bedf





23 Pope's Island

Zoom to a town



Exhibit J

List of applicable Regulatory Review

Municipal and Federal Reviews for the Proposed Project:

**Cooke Island
Existing Fill and Building, and Proposed Barge, Gangway, &
Reconfiguration Zone
23 Popes Island, New Bedford, MA**

Local Permits:

Order of Conditions – Notice of Intent to be submitted

State of Massachusetts Permits:

Chapter 91 License – Application submitted May 2019, Transmittal No. X283448

Federal Permits:

US Army Corps of Engineers - PCN under GP-3 to be submitted



Item Title:

CANNABIS CONROL COMMISSION

Item Detail:

01/10/20 WRITTEN MOTION, Councillor Gomes, requesting that the City Council forward a letter of request to the Commonwealth of Massachusetts' Cannabis Commission as to whether the City is following State Law regarding marijuana establishments in the City; and further, enclosed in the letter, please include a copy of the 11-page "Screening Form/Application for a Marijuana Establishment Host Community Agreement", and a copy of the City's zoning map that has been put forth by the Mayor's Review Committee, comprised of the City Solicitor, the City Planner, the Chief of Police, the Chief Financial Officer, the Director of Inspectional Services, the Director of Planning, Housing and Community Development and the City's Health Director; asking that the Cannabis Control Commission review the application and the zoning map and report back to the City Council as to whether this Application process and zoning map applies to the laws of the Commonwealth of Massachusetts' Cannabis Control Commission; and further, that Steven Hoffman, Chairman of the Massachusetts Cannabis Control Commission or a representative, meet with the Special Committee on Licensing and Zoning for Cannabis to discuss whether the City has followed Massachusetts Laws and policies regarding marijuana establishments in the City of New Bedford.

Additional Information:



Item Title:
SPECIAL ACCOMODATIONS

Item Detail:

***In accordance with the Americans with Disabilities Act (ADA),
if any accommodations are needed, please contact the City Council Office at 508-979-1455. Requests
should be made as soon as possible but at least 48 hours prior to the scheduled meeting.***

Additional Information: