

THE STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY

SUPERIOR COURT

Rye Harbor Lobster, LLC
Rye Harbor Lobster Pound, LLC
Sylvia Cheever
Nathan Hanscom

v.

Pease Development Authority
New Hampshire Port Authority
Paul Brean
Geno Marconi

No. 217-2025-CV-00039

MOTION TO DISMISS

The Pease Development Authority (“PDA”), the Division of Ports and Harbors,¹ and Paul Brean, by and through the Office of the Attorney General, submit the following motion to dismiss the plaintiffs’ claims against them:

Introduction

The plaintiffs contend that the PDA’s regulation of the Rye Harbor Lobster Pound, a private business operating on state property at a state-owned marine facility, violates state and federal law. They assert a laundry list of claims against the PDA, the Division of Ports and Harbors, and the PDA’s Executive Director, Paul Brean² under the Administrative Procedure Act

¹ There is no longer a distinct entity called the “New Hampshire Port Authority.” The correct legal name is the Division of Ports and Harbors, which is part of the PDA. *See* RSA 12-G:43, I. In 2000, the then-State Port Authority was given responsibility for managing, among other things, Rye Harbor. *See* Laws 2000, 55:6. Soon thereafter, the “Port Authority” functions became the purview of the PDA Division of Ports and Harbors, *see* Laws 2001, 2901:1; *see generally* RSA chapter 12-G; RSA 12-G:42 et seq.

² The plaintiffs also name Geno Marconi as a defendant. Mr. Marconi is represented by separate counsel and has filed a separate motion to dismiss.

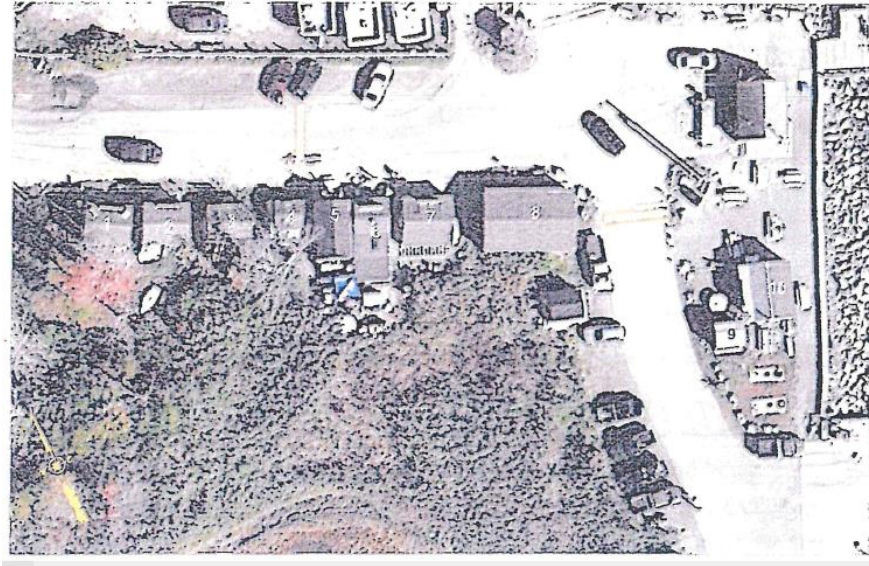
(“APA”), the State and Federal Constitutions, state antitrust law, and state tort law. They seek monetary damages and prospective relief.

As set forth in detail below, none of the plaintiffs’ claims has legs. The plaintiffs cannot obtain monetary damages as a matter of law under the APA or the State or Federal Constitution, and their remaining claims for damages are barred by sovereign immunity or are not adequately pleaded (or both). The plaintiffs have failed to state any viable claim under the APA or the State or Federal Constitution that would entitle them to prospective relief. The plaintiffs’ claims against the PDA, the Division of Ports and Harbors, and Paul Brean should therefore be dismissed in their entirety.

Factual Background³

1. Rye Harbor is a state-owned marine facility in the Town of Rye, New Hampshire. Every summer, a collection of certain marine-related businesses operates in shacks at Rye Harbor pursuant to Rights of Entry with the PDA. Rye Harbor Lobster Pound, LLC is one such business. *See generally* Complaint. Below is an aerial photograph of the shacks at issue, taken from the Right of Entry exhibits attached as Exhibit A and Exhibit B.

³ The following facts recited in this section are assumed true solely for purposes of this motion. In addition, in supplement to the Complaint, a copy of the recent RoEs and Concession Agreements are attached hereto as Exhibits A, B, and C.



2. Since 1996, Rye Harbor Lobster Pound has operated each summer in the Rye Harbor marine facility. *See* Complaint ¶¶ 19, 20. For reference, Rye Harbor Lobster Pound contracted to use shack #5 and shack #6 in the aerial photograph above. *See* Exs. A & B.

3. Shack owners such as Rye Harbor Lobster Pound are offered a so-called “Right of Entry” agreement (“RoE”), which is a contract granting a revocable license for the marine-related business to use and occupy a small area of land in Rye Harbor for placement of its shack. *Id.* ¶ 21. This system has been used “for decades.” *Id.*

4. A true and accurate copy of Rye Harbor Lobster Pound’s 2023 through 2025 RoEs (executed by both parties) is attached as Exhibit A. Plaintiff Nathan Hanscom signed on behalf of Rye Harbor Lobster Pound, and Plaintiff Sylvia Cheever witnessed the signature. *See* Ex. A at 7.

5. In 2005, Rye Harbor Lobster Pound “began preparing and selling foods such as lobsters rolls and chowder” from its shack at Rye Harbor. *Id.* ¶ 20. Accordingly, Rye Harbor Lobster Pound had entered into a concession contract for years. *Id.* ¶¶ 28, 29. A true and accurate copy of the most recent (2023) Concession Agreement between PDA and Rye Harbor

Lobster Pound (and executed by both parties) is attached as Exhibit C. Plaintiff Nathan Hanscom signed on behalf of Rye Harbor Lobster Pound, and Plaintiff Sylvia Cheever witnessed the signature. *See* Ex. C at 8.

6. As shown in the Concession Agreement, starting in 2023 Rye Harbor Lobster Pound contractually agreed to pay a concession fee of 10% of Rye Harbor Lobster Pound's gross sales. *Id.* ¶¶ 96-100; *see also* Ex. C at 1.

7. The companion Concession Agreement arose because Rye Harbor Lobster Pound intended to sell ready-to-eat, restaurant-style food items on the premises. *See* Complaint ¶ 99; *see also* Ex. C.

8. Rye Harbor Lobster Pound was not the sole shack owner to be required to enter into a Concession Agreement to sell restaurant-style, ready-to-eat food—another shack owner serving ready-to-eat food (Rye Harborside) also had an RoE and companion Concession Agreement (with the same 10% concession fee). *Id.* ¶ 103. True and accurate copies of Rye Harborside's 2023 RoE and Concession Agreement are attached as Exhibits D and E.

9. To the extent relevant, Ms. Cheever is a member/manager of Rye Harbor Lobster LLC and Mr. Hanscom is a member, *see* Ex. F (NH SOS printout); *see also* Complaint ¶ 4. As for the Rye Harbor Lobster Pound entity, Mr. Hanscom and Ms. Cheever are both managers of that LLC, *see* Ex. G (NH SOS printout); *see also* Complaint ¶ 5.

10. And finally, to the extent relevant it bears noting the PDA has promulgated various administrative rules. *See* N.H. Admin. R. PART Pda, *available at*:

https://gc.nh.gov/rules/state_agencies/pda.html

Standard of Review

The standard of review on a motion to dismiss “is whether the allegations in the plaintiff’s pleadings are reasonably susceptible of a construction that would permit recovery.” *Lamprey v. Britton Constr.*, 163 N.H. 252, 256 (2012). When assessing a motion to dismiss, the Court must “assume the truth of all well-pleaded facts alleged by the plaintiff, construing all inferences in the light most favorable to him.” *Garod v. Steiner Law Office, PLLC*, 170 N.H. 1, 5 (2017). The Court “may also consider documents attached to the plaintiff’s pleadings, or documents the authenticity of which are not disputed by the parties, official public records, or documents sufficiently referred to in the complaint.” *Grand Summit Hotel Condo. Unit Owners’ Ass’n v. L.B.O. Holding, Inc.*, 171 N.H. 343, 345 (2018) (citation, quotation marks, and brackets omitted). The Court need not, however, “accept statements in the complaint that are merely conclusions of law.” *Chasan v. Village Dist. of Eastman*, 128 N.H. 807, 814 (1986) (citation and quotation marks omitted). “Dismissal is appropriate if the facts pled do not constitute a basis for legal relief.” *Grand Summit Hotel Condo. Unit Owners’ Ass’n*, 171 N.H. at 345 (citation, quotation marks, and brackets omitted).

Argument

I. The plaintiffs are not entitled to damages as a matter of law on their state or federal constitutional claims.

The plaintiffs assert several claims under the State and Federal Constitutions. In Count I, the plaintiffs appear to allege that the PDA and Division of Ports and Harbors (referred to together as the “institutional defendants”) violated the due-process protections in both constitutions (along with a violation of the state APA, addressed in the next section). In Count II, the plaintiffs assert a violation of the Fourteenth Amendment to the U.S. Constitution via 42

U.S.C. § 1983. And in Counts III and V the plaintiffs assert violations of Part I, Article 15 and Part I, Article 8 of the New Hampshire Constitution, respectively.

The plaintiffs have failed to state viable claims under any of these constitutional provisions, as explained in detail below. Nevertheless, it bears noting at the outset that the plaintiffs would not be entitled to damages on any of their constitutional claims even if those claims were viable. “It is well settled that neither a state agency nor a state official acting in his official capacity may be sued for damages in a section 1983 action.” *Fantini v. Salem State College*, 557 F.3d 22, 33 (1st Cir. 2009) (cleaned up). The PDA is a state agency, *see* RSA 12-G:43, the Division of Ports and Harbors is part of the PDA, *see id.*, and it is clear from the face of the complaint that Paul Brean is named as a defendant solely in his official capacity as Executive Director of the PDA, *see* Compl. ¶¶ 8–9. The plaintiffs therefore cannot maintain federal constitutional claims for damages against any of these defendants through § 1983. Likewise, there is no state statute authorizing damages claims for violations of the State Constitution, and the New Hampshire Supreme Court has consistently declined to recognize such a remedy. *See, e.g., Khater v. Sullivan*, 160 N.H. 372, 373–75 (2010); *id.* (collecting cases). The constitutional claims in Counts I, II, III, and V must therefore be dismissed to the extent the plaintiffs seek monetary damages.

II. The plaintiffs have not stated a viable claim under the APA.

In Count I, the plaintiffs assert that the institutional defendants violated the APA by requiring that the plaintiffs enter into RoEs and Concession Agreements without notice-and-comment rulemaking. This claim fails as a matter of law for several reasons.

To the extent the plaintiffs seek damages under Count I, the APA does not authorize that remedy. *See* RSA 541-B:23, :24. Count I therefore may not proceed insofar as the plaintiffs’ seek damages for purported violations of the APA.

Count I similarly may not proceed to the extent the plaintiffs seek prospective relief in relation to Concession Agreements between the PDA and Rye Harbor Lobster Pound. Outside of certain exceptions not implicated in this case, “the judicial power in this State is limited to decision *actual*, and not hypothetical, cases.” *Duncan v. State*, 166 N.H. 630, 641 (2014) (emphasis in original). Consequently, parties must “have personal legal or equitable rights that are adverse to one another, with regard to an actual, not hypothetical, dispute, which is capable of judicial redress.” *Id.* at 642–43 (citations omitted); *cf. Kress v. CCA of Tenn., LLC*, 694 F.3d 890, 894 (7th Cir. 2012) (observing that injunctive and declaratory relief are not available when there is no ongoing violation of law). It is a matter of public record that neither Rye Harbor Lobster Pound nor any other shack operating at Rye Harbor is subject to a separate Concession Agreement for the 2025 season. Ex. H at 1–2. In other words, Rye Harbor Lobster Pound may sell restaurant-style, ready-to-eat food during the 2025 season without entering into such an agreement. *See id.*

This fact—which the Court may consider when ruling on a motion to dismiss, *Grand Summit Hotel Condo. Unit Owners’ Ass’n*, 171 N.H. at 345—renders any dispute between the Rye Harbor Lobster Pound and the PDA concerning Concession Agreements hypothetical in nature. Count I should therefore be dismissed to the extent it seeks prospective relief with respect to Concession Agreements.⁴

⁴ To the extent the plaintiffs ask this Court to declare the Concession Agreement governing the 2023 and 2024 seasons as an invalid rule under the APA, that claim is time-barred. RSA 541-A:23, IV provides that “[a]n action to contest the validity of a rule for noncompliance with the provisions [of the APA] shall be commenced within one year of the effective date of the rule.” The Concession Agreement between PDA and Rye Harbor Lobster Pound governing the 2023 and 2024 seasons has an effective date of July 1, 2023. *See* Ex. C. at 1. It was executed before that date. *See id.* at 8. The plaintiffs did not initiate this lawsuit until January 10, 2025, more than a year after the Concession Agreement went into effect.

While Rye Harbor Lobster Pound does remain subject to an RoE, the plaintiffs have failed to allege that this agreement violates the APA. The plaintiffs contend, in essence, that RoEs cannot be enforced with respect to Rye Harbor Lobster Pound without going through formal notice-and-comment rulemaking. *See, e.g.*, Compl. ¶ 146. This is incorrect as a matter of law, both because the PDA is expressly authorized to enter contracts and leases without promulgating rules regarding the terms of those contracts and leases and because RoEs are not “rules” within the meaning of the APA.

It is well settled that “promulgation of a rule pursuant to RSA chapter 541-A is not necessary to carry out what a statute authorizes on its face.” *Nevins v. N.H. Dep’t of Res. & Econ. Dev.*, 147 N.H. 484, 487 (2002) (quoting *Petition of Smith*, 139 N.H. 299, 307) (1994)); *see id.* (collecting cases). The Legislature has expressly authorized the PDA, through multiple statutes, to enter contracts governing access to and use of state-owned property regulated by the PDA. For instance, RSA 12-G:8, VIII authorizes the PDA:

To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this chapter, including contracts with any person, firm, corporation, municipality, state agency, governmental unit, or other entity, foreign or domestic, provided that no contract in excess of \$10,000, including contracts under paragraphs III and XV but excluding contracts and agreements entered into under paragraph V, shall be made without requests for proposal. This requirement may also be eliminated by an affirmative vote of 5 members of the board on any particular matter. Justification for eliminating the requirement shall be recorded in the minutes of the meeting.

Similarly, RSA 12-G:8, XV authorizes the PDA:

To enter into and perform contracts and agreements, whether or not they may be deemed to constitute indebtedness under applicable law, for the joint and separate planning, financing, construction, purchase, operation, maintenance, use, sharing costs of, ownership, mortgaging, leasing, sale, disposal of, or other participation in facilities, products, or services of any person who engages in business on property owned or controlled by the authority.

RSA 12-G:8, XX authorizes the PDA to “contract for the construction, operation, or maintenance of any parts thereof, or the services performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms as the authority may determine.” RSA 12-G:8, X. And RSA 12-G:53, II provides that “[p]urchases and contracts of the authority may be made or let without regard to any provision of law relating to public purchases or contracts.”

These statutes, when taken together or in isolation, authorize the PDA to enter contracts such as RoEs without the need for formal rulemaking. *See Nevins*, 147 N.H. at 487. For this reason alone, Count I fails as a matter of law.

Count I would still fail, however, even in the absence of this statutory authority. RSA 541-A:21, I(n) broadly exempts most of the PDA’s functions from rulemaking. It specifically provides that, “[e]xcept for rules adopted by the authority acting through the division of ports and harbors under RSA 12-G:42, X, . . . RSA 12-G, relative to the Pease development authority” “shall be exempt from RSA 541-A.” RSA 541-A:21, I(n). In turn, RSA 12-G:42, X confers on the PDA the power to:

Adopt rules, pursuant to RSA 541-A, relative to:

- (a) Port captains, pilots, and pilotage.
- (b) Harbors and harbor masters.
- (c) The terms, conditions, and procedures under which the division shall issue, suspend, revoke, deny, or approve permits required under this chapter for moorings and state-owned slips.
- (d) State-owned commercial piers and associated facilities, including without limitation the terms, conditions, and procedures under which the division shall issue, suspend, revoke, deny, or approve permits authorized under this chapter relative to the use of state-owned commercial piers and associated facilities and such other rules as the division deems necessary for the proper and safe use, operation, and management of such commercial piers and associated facilities.

The rulemaking authority conferred under RSA 12-G:42, X is permissive, not mandatory. The statute empowers the PDA to promulgate rules, but it does not mandate any specific exercise of that power. *See generally 15 W. 17th St. LLC v. Comm’r of Internal Revenue*, 147 T.C. 557, 578 (2016) (differentiating between mandatory and permissive delegations of rulemaking authority). Nor does the statute prescribe the contours of any rules that the PDA may choose to promulgate. Indeed, the reference in RSA 12-G:53, IV to “any rules” the PDA promulgates being subject to the APA confirms that this power is permissive. The notion that the PDA was required to promulgate rules under the APA related RoEs before it could enter into such agreements with Rye Harbor Lobster Pound is thus also belied by the language and structure of RSA 12-G:42, X.

But Count I would fail in any event even if the PDA were not authorized by statute to enter into RoEs *and* RSA 12-G:42, X required the PDA to promulgate rules before entering into such agreements. As noted above, the PDA has promulgated rules under RSA 12-G:42, X through N.H. Admin. R. PART Pda. Through those rules, the PDA has specifically and repeatedly contemplated that access to and use of state-owned commercial piers will be regulated by contract. *See, e.g.*, N.H. Admin. R. Pda 603.02(b) (commercial vessel access); 603.04(c)(1)(b) (parking); 603.04(f)(4) (parking); 603.06(c) (attaching objects); 603.08(b)(2) (dispensing fuel); 603.09 (welding and hot work); 603.10 (storing property); 603.11(b) (consumption of alcohol); 604.02(d)(3) (pier use permits); 603.02(d)(4) (pier use permits); 704.01(a) (pier slip permits); 704.01(f) (pier slip permits); 706.01(c)(5) (pier slip permits); *see also* N.H. Admin R. Pda 603.01(c) (recreational use). Courts construe rules “in their entirety, rather than in segments.” *Vector Mktg. Corp. v. N.H. Dep’t of Revenue Admin.*, 156 N.H. 781, 783 (2008). The rules PDA has promulgated related to state-owned commercial piers, when viewed in their entirety, leave no doubt that access to and use of those piers will be controlled through private contracting between

the PDA and business owners seeking to use those piers for commercial purposes. So Count I would still fail even under the plaintiffs’ incorrect view of PDA’s rulemaking obligations.

While all of this is dispositive, Count I also fails because RoEs are not “rules” within the meaning of the APA. To be a “rule,” an agency action must be one of “general applicability” that binds the public to a prescribed standard. *See* RSA 541-A:1, XV (defining “rule”); *Maxi Drug North, Inc. v. DHHS*, 154 N.H. 102 (2006) (agency letter constituted “rule” because it applied “to all pharmacy providers seeking reimbursement pursuant to the state plan”); *see also Nw. Pulp & Paper Ass’n v. Dep’t of Ecology*, 20 Wash. App. 2d 533, 545, 500 P.3d 231, 237 (2021), *aff’d* 200 Wash. 2d 666, 520 P.3d 985 (2022) (“An agency action is a directive of general applicability if it is ‘applied uniformly to all members of a class.’”). RoEs are not regulations of “general applicability” that bind the public at large. Rather, they are private contractual agreements between two contracting parties—in this case, the PDA and Rye Harbor Lobster Pound. Courts have routinely held that contracts between an agency and a private party are not rules subject to the APA.⁵

To hold otherwise would lead to absurd results. Not least of these would be the uncertainty such a holding would cast on existing agency contracts. Requiring agencies to go

⁵ *See Bitumar United States, Inv. v. NHDOT*, Case No. 217-2014-CV-00389 (Merrimack Super. Aug. 15, 2014) (citing and quoting *Dept. of Transp. v. Blackhawk Quarry Co. of Florida, Inc.*, 528 So.2d 447, 450 (5th DCA Fla. 1988) for proposition that NHDOT materials specification was “more in the nature of a contract term between the contractor and DOT as opposed to a rule.”) (emphasis added); *In re Appeal of Rule 36 Ltd. Partnership of Duluth*, Case NO. A10-2099, 2011 WL 3426040, *6 (Minn. App. Aug. 8, 2011) (holding agency contracts were not rules and agency did not have to submit contracts through state administrative procedures act); *New England Multi-Unit Hous. Laundry Ass’n v. Rhode Island Hous. & Mortg. Fin. Corp.*, 893 F. Supp. 1180, 1194 n.15 (D.R.I. 1995) (“As distinct from promulgating an administrative rule of ‘general applicability . . .’, this Court believes that [defendant], through its memorandum of October 20, 1989, was simply exercising the contractual rights afforded to it as the mortgagee under the RAs executed by [defendant] and the owners, and the HMAs executed by the owners and management agents subject to [defendant]’s approval. The APA would most likely be inapplicable to such an exercise of [defendant]’s contractual rights as a mortgagee.”) (emphasis added).

through formal rulemaking for any state contract that imposes substantive requirements on the contracting parties would also hamstring government function. As the Ninth Circuit has recognized:

The practical necessity for the [federal APA's] public contracts exception is apparent. It would be altogether unreasonable to require the various agencies of government to publish notice in the Federal Register and to hold hearings each and every time they entered into, rescinded, or canceled a government contract; the burden in time and expense would be extraordinary. Plaintiffs' reliance on the Administrative Procedure Act is misplaced.

Rainbow Valley Citrus Corp. v. Federal Crop Insurance Corp., 506 F.2d 467, 469 (9th Cir 1974).

So, too, here.

III. The plaintiffs have failed to state a viable equal protection claim under the Fourteenth Amendment or Part I, Article 15.

In Count II, the plaintiffs bring a claim under § 1983 for alleged violations of the Fourteenth Amendment's Equal Protection Clause. As discussed above, state agencies and state officials named in their official capacity cannot be sued under § 1983. *Fantini*, 557 F.3d at 33. Because the plaintiffs only purport to bring Count II under § 1983, that claim may not proceed.

But the plaintiffs have not alleged a violation of the Fourteenth Amendment in any event. The plaintiffs do not allege that they are part of some protected class that would entitle them to heightened scrutiny under the Fourteenth Amendment. They instead assert what is known as a "class-of-one" equal protection claim. *Freeman v. Town of Hudson*, 714 F.3d 29, 38 (1st Cir. 2013). To sustain such a claim, the plaintiffs must sufficiently allege that they were "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Id.* They have not satisfied either element.

"[C]lass-of-one claims require an extremely high degree of similarity between the plaintiffs and the persons to whom they compare themselves." *Id.* (cleaned up). In the analogous

“land-use context, this means more than pointing to nearby parcels in a vacuum and leaving it to [the government] to disprove conclusory allegations that the owners of those parcels are similarly situated.” *Id.* In their complaint, the plaintiffs fail to identify *any* individual or entity that was similarly situated to them. Indeed, the closest they come to identifying a comparator is in paragraphs 105 and 106 of their complaint, where they allege that another business, Granite State Whale Watch, “is not subject to a separate Concession Agreement for prepared food and beverage items that it sells on its whale watch tours.” The plaintiffs do not explain how a whale watch business that sells concessions at sea during tours has the requisite “extremely high degree of similarity” with Rye Harbor Lobster Pound to satisfy the first requirement of a class-of-one claim. Accordingly, Count II fails. *See Freeman*, 714 F.3d at 38 (noting that when the complaint “fails to meet the ‘similarly situated’ test,” there is no need to reach “the rational basis requirement”).

The plaintiffs have also failed to sufficiently plead that there was no rational basis for the difference in treatment they allege. *See id.* “Where, as here, no suspect class or fundamental right is implicated, governmental action subject to equal protection scrutiny under the rational basis test must be sustained if *any* conceivable basis rationally supports it.” *TriHealth, Inc. v. Board of Comm’rs, Hamilton Cty, Ohio*, 43 F.3d 783, 790 (6th Cir. 2005). “[A] classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity.” *Heller v. Doe*, 509 U.S. 312, 319 (1993). “An equal protection claimant may not prevail against a [motion to dismiss] simply by asserting an inequity and tacking on the self-serving conclusion that the defendant was motivated by discriminatory animus.” *Zell v. Ricci*, 957 F.3d 1, 13–14 (1st Cir. 2020) (cleaned up). Because the plaintiffs offer only conclusory assertions of discriminatory animus devoid of well-pleaded factual support, they have

not overcome the strong presumption of validity. Count II therefore also fails under the second element of a Fourteenth Amendment “class-of-one” claim.

In Count III, the plaintiffs purport to bring an equal protection claim under the State Constitution. The New Hampshire Supreme Court has indicated that “although the language in some of [its] decisions varied from that used by federal courts, [the] State equal protection analysis is identical.” *In re Sandra H.*, 150 N.H. 634, 638–39 (2004). As previously discussed, the plaintiffs have not identified any comparator to which they are similarly situated. *See id.* at 638 (“Holding that persons who are not similarly situated need not be treated the same under the law is a shorthand way of explaining the equal protection guarantee.”). Furthermore, because the plaintiffs have not identified “some infringement of a fundamental right, an important substantive right, or application of some recognized suspect classification,” they have not established that heightened scrutiny applies under the State Constitution. *Id.* at 637–38. Consequently, their equal protection claim under the State Constitution fails for the same reason as their Fourteenth Amendment claim, and Count III should also be dismissed.

IV. The plaintiffs have not alleged a violation of RSA ch. 356.

In Count IV, the plaintiffs contend that the institutional defendants violated RSA ch. 356, New Hampshire’s antitrust statute.⁶ The plaintiffs allege that the defendants violated RSA ch. 356 by conspiring with each other to put Rye Harbor Lobster Pound out of business, Compl. ¶ 173, by requiring Rye Harbor Lobster Pound to enter into Concession Agreements, Compl. ¶ 174, and by “agreeing and combining together to discriminately implement and enforce the PDA and Port Authority’s illegally promulgated rules against the Rye Harbor Lobster Pound,” Compl. ¶ 175. The Court should dismiss this claim as well.

⁶ The plaintiffs do not assert Count IV against Paul Brean.

To the extent Count IV is asserted against the institutional defendants, it is barred by sovereign immunity. State agencies are “immune from suit in New Hampshire courts unless there is an applicable statute waiving that immunity.” *XTL-NH, Inc. v. N.H. State Liquor Comm’n*, 170 N.H. 653, 656 (2018) (citation and quotation marks omitted). “Any statutory waiver is limited to that which is articulated by the legislature; thus, New Hampshire courts lack subject matter jurisdiction over an action against the State unless the legislature has prescribed the terms and conditions on which it consents to be sued, and the manner in which the suit shall be conducted.” *Id.* (citation and quotation marks omitted). Waivers of sovereign immunity “are strictly construed” and “must evidence a clear intent to grant a right to sue the State.” *Chase Home for Children v. N.H. Div. for Children, Youth & Families*, 162 N.H. 720, 730 (2011) (citation and quotation marks omitted).

Nothing in RSA ch. 356 purports to waive the State’s sovereign immunity for personal actions brought under that chapter. RSA 356:11, which authorizes private enforcement, makes no mention of the State at all. Nor does RSA 356:2, which addresses what is prohibited by the chapter. The statute therefore does not “evidence a clear intent to grant a right to sue the State.” *Id.*⁷

But even if sovereign immunity did not apply, Count IV still would not be viable for several reasons. “Under the intracorporate conspiracy doctrine, the agents and employees of a

⁷ This conclusion is in accord with how federal courts have interpreted RSA ch. 356’s federal analog, the Sherman Act. *See* RSA 356:14 (“In any action or prosecution under this chapter, the courts may be guided by interpretations of the United States’ antitrust laws.”). The U.S. Supreme Court has observed that “nothing in the language of the Sherman Act or in its history . . . suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature.” *Parker v. Brown*, 317 U.S. 341, 350–51 (1943). Federal courts of appeals have similarly held that “the United States, its agencies and officials, remain outside the reach of the Sherman Act.” *Name.Space, Inc. v. Network Sols., Inc.*, 202 F.3d 573, 580 (2d Cir. 2000) (quoting *Sea-Land Service, Inc. v. Alaska Railroad*, 659 F.2d 243, 246 (D.C. Cir. 1981)). These decisions bolster the conclusion that RSA ch. 356 does not waive the State’s sovereign immunity from suit.

corporate entity acting within the scope of their employment or authority are legally incapable of conspiring together.” *Carney v. Town of Weare*, No. 15-cv-291-LM, 2017 WL 680384, at *1 (D.N.H. Feb. 21, 2017). The New Hampshire Supreme Court has recognized that this concept applies to claims brought under RSA 356:2. *See Kenneth E. Curran, Inc. v. Auclair Transp.*, 128 N.H. 743, 748–49 (1986); *see also Heritage Home Health, Inc. v. Capital Region Health Care Corp.*, No. 95-558-JD, 1996 U.S. Dist. LEXIS 22387, at *7 (D.N.H. Oct. 1, 1996) (noting that the concept extends to purported agreements between a corporation and its employees). The intracorporate conspiracy doctrine precludes Count IV to the extent the plaintiffs allege that the institutional defendants violated RSA ch. 356 by conspiring between themselves or with their employees.

Additionally, the plaintiffs have failed to allege any substantive violation of RSA 356:2. To state a claim under RSA 356:2 a plaintiff must allege, among other things, that the defendant “participated in a contract in restraint in trade” and “that the challenged action caused injury to competition in the relevant market.” *Wheeler v. Mobil Chem. Co.*, No. 94-228-B, 1994 U.S. Dist. LEXIS 16697, at *4 (D.N.H. Nov. 11, 1994). This requires a plaintiff to show “a reduction of competition in the market in general and not mere injury to their own position as competitors in the market.” *Id.* at *5 (citation and quotation marks omitted). Here, the plaintiffs have at most alleged harm to their own business, not to competition in the market. They have therefore failed to state a viable claim under RSA 356:2. *See id.* at *7 (“The antitrust laws were enacted for the protection of *competition*, not *competitors*.” (cleaned up; emphasis in original)).

V. The plaintiffs have not stated a claim under Part I, Article 8.

In Count V, the plaintiffs contend that the defendants violated their right to an accountable government under Part I, Article 8. There are two recognized avenues for members

of the public to invoke their rights under Part I, Article 8, and neither is implicated here. The plaintiffs do not allege that their “right to access to governmental proceedings or records” has been “unreasonably restrained” such that they have a justiciable cause of action under Part I, Article 8. *Hughes v. Speaker of N.H. House of Representatives*, 152 N.H. 276, 288–89 (2005). Nor do they bring claims as taxpayers challenging “a specific governmental spending action or approval of spending.” *Carrigan v. N.H. Dep’t of Health and Hum. Servs.*, 174 N.H. 362, 370 (2021). They have therefore failed to assert any recognized claim under Part I, Article 8, and Count V should be dismissed.

VI. The plaintiffs’ tort counts do not fall within the waiver of sovereign immunity in RSA ch. 541-B and are otherwise not sufficiently pleaded.

In Counts VI, VII, and VIII, the plaintiffs assert claims of conversion, intentional infliction of emotional distress, and negligent infliction of emotional distress. None of these claims, as asserted in the complaint, fall within RSA ch. 541-B’s waiver of sovereign immunity for tort actions.

RSA ch. 541-B contains a limited waiver of sovereign immunity for certain tort actions seeking “monetary relief” for “[b]odily injury, personal injury, death or property damages” RSA 541-B:1, II-a(a). The well-pleaded facts in the complaint, when assumed true, do not support a reasonable inference that the plaintiffs suffered any of these categories of injuries due to the defendants’ alleged actions. Rather, the only purported injuries alleged in the complaint consist of economic harm to the plaintiffs’ business.

The Supreme Court has made clear that these types of economic harms are not compensable in tort actions under the economic-loss doctrine. *Border Brook Terrace Condominium Ass’n v. Gladstone*, 137 N.H. 11, 18 (1993) (“a plaintiff may not ordinarily recover in a negligence claim for purely economic loss” (quotation omitted)); *Lempke v.*

Dagenais, 130 N.H. 782, 792 (1988) (“It is clear that the majority of courts do not allow economic recovery in tort . . .”). The economic-loss doctrine is a “judicially-created remedies principle that operates generally to preclude contracting parties from pursuing economic or commercial losses associated with the contract relationship.” *Plourde Sand & Gravel Co. v. JGI Eastern, Inc.*, 154 N.H. 791, 794 (2007). That doctrine would preclude the plaintiffs’ tort claims even if sovereign immunity were not implicated. There is no indication in the language of RSA ch. 541-B (or any other statute) that the Legislature intended to authorize tort recovery against the State for a category of injuries that was not compensable in tort under the common law.⁸

The plaintiffs have also failed to adequately plead any of their tort claims. “Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.” *LFC Leasing & Fin. Corp. v. Ashuelot Nat. Bank*, 120 N.H. 638, 640 (1980). The plaintiffs contend that the institutional defendants “exercised dominion over Rye Harbor Lobster Pound’s property by unlawfully requiring Rye Harbor Lobster Pound to pay ten percent of its gross revenue to the PDA and Port Authority under a Concession Agreement.” Compl. ¶ 186. The plaintiffs premise their conversion claim on lost revenue, and money is not chattel. *See Chattel*, Black’s Law Dictionary (9th ed. 2009) (“That Money is not to be accounted Goods or *Chattels*, because it is not of it self valuable *Chattels* are either *personal* or *real*. (emphases in original)). Nor do the plaintiffs offer any explanation for why having to pay ten percent of gross revenues to the PDA constitutes the type of “serious interference” that could give rise to a conversion claim. Count VI therefore fails.

⁸ To be sure, the individual plaintiffs do assert as part of their intentional and negligent emotional distress claims that they have “suffered severe emotional distress and have had significant health issues as a direct result of the Defendants’ actions.” Compl. ¶¶ 194, 198. But the plaintiffs allege no well-pleaded facts that would support these conclusory assertions, which, standing alone, cannot defeat a motion to dismiss.

To state a claim for intentional infliction of emotional distress, the plaintiffs must allege that the defendants “intentionally cause[d]” the plaintiffs “severe emotional distress” through “extreme and outrageous conduct.” *Konefal v. Hollis/Brookline Coop. Sch. Dist.*, 143 N.H. 256, 260 (1998). “In determining whether conduct is extreme and outrageous, it is not enough that a person has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by malice.” *Mikell v. Sch. Admin. Unit #33*, 158 N.H. 723, 729 (2009) (citation and quotation marks omitted). “Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Id.* (citation and quotation marks omitted). “Moreover, severe emotional distress is an element of the tort.” *Konefal*, 143 N.H. at 261.

Even when taken as true, the allegations in the complaint do not constitute the type of extreme and outrageous conduct that under controlling precedent can give rise to an intentional infliction of emotional distress claim. Nor do the plaintiffs offer any nonconclusory allegations of emotional distress, much less the type of severe emotional distress that is an element of such a claim. For both reasons, Count VII fails.

The elements of negligent infliction of emotional distress are “(1) causal negligence of the defendant; (2) foreseeability; and (3) serious mental and emotional harm accompanied by objective physical symptoms.” *Chartier v. Apple Therapy of Londonderry, LLC*, 175 N.H. 603, 607–08 (2023) (citation omitted). The plaintiffs do not allege any facts that, when taken as true, would support an inference that the defendants were negligent. Indeed, they fail to identify any purportedly negligent acts in their complaint at all. The facts alleged in the complaint likewise do

not support an inference that the plaintiffs suffered serious mental and emotional harm, much less identify any objective physical symptoms the plaintiffs allegedly suffered. In the absence of either of these elements, the plaintiffs have necessarily also failed to allege that the defendants' negligence foreseeably caused their emotional harm. Count VIII should therefore also be dismissed for failure to state a claim.

VII. The plaintiffs have failed to allege a viable claim for civil conspiracy.

In the final count of their complaint, errantly labeled as Count XIII, the plaintiffs allege a claim for civil conspiracy. The allegations of a conspiracy, which are wholly conclusory, do not give rise to a viable cause of action. *See Jay Edwards, Inc. v. Baker*, 130 N.H. 41, 47 (1987) (affirming dismissal of a civil conspiracy claim when “[r]eferences to conspiracy and conspiratorial conduct [were] set forth in the plaintiff’s petition, and yet when used they [were] mere legal assertions, unsupported by factual content”); *cf. Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556–57 (2007) (*Souter, J.*) (“It makes sense to say, therefore, that an allegation of parallel conduct and a bare assertion of conspiracy will not suffice. Without more, parallel conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality.”). Count XIII is also barred by the intracorporate conspiracy doctrine for the reasons discussed above. *See Carney*, No. 15-CV-291-LM, 2017 WL 680384, at *15 (D.N.H. Feb. 21, 2017). Count XIII should also be dismissed.

VIII. The plaintiffs are not entitled to injunctive or declaratory relief as a matter of law.

In Counts IX and X of their complaint, the plaintiffs purport to assert causes of action for injunctive and declaratory relief. Injunctions and declaratory judgments are remedies, not freestanding causes of action. To the extent the plaintiffs seek these remedies with respect to Concession Agreements, they assert no actual, live controversy within this Court’s jurisdiction

for the reasons previously stated. And the plaintiffs cannot obtain either remedy without otherwise pleading a violation of law. *Cf. Kress*, 694 F.3d at 894 (observing that injunctive and declaratory relief are not available when there is no ongoing violation of law). For each of these reasons, Counts IX and X should be dismissed.

IX. Defendant Paul Brean should be dismissed for lack of sufficient allegations concerning or involving him.

The claims against the institutional defendants and Paul Brean should be dismissed in their entirety for the reasons already stated. If, however, any portion of the plaintiffs' complaint survives this motion, Paul Brean should still be dismissed as a defendant. The plaintiffs have failed to allege any act that Paul Brean undertook that violated their rights under state or federal law. *Cf. Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) ("Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution."). Paul Brean is therefore not a proper defendant in this case.

Conclusion

For the foregoing reasons, the claims against the Pease Development Authority, the Division of Ports and Harbors, and Paul Brean should be dismissed in their entirety.

Respectfully submitted,

The Pease Development Authority, the Division of
Ports and Harbors, and Paul Brean

By their attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: May 27, 2025

By: /s/ Samuel Garland
Samuel Garland, No. 266273
Senior Assistant Attorney General
New Hampshire Department of Justice
1 Granite Place South
Concord, NH 03301
Phone: (603) 271-3658
samuel.rv.garland@doj.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was sent via the Court's electronic filing system to all parties of record.

Date: May 27, 2025

/s/ Samuel Garland
Samuel Garland.

JUN 26 2023

Pease Development Authority

PEASE
INTERNATIONAL
PORTS AND HARBORS

555 Market Street, Suite 1 Portsmouth, NH 03801

RIGHT OF ENTRY

Pease Development Authority, Division of Ports and Harbors ("PDA-DPH") with an address of 55 International Drive, Portsmouth, NH 03801, under the authority set forth in NH RSA 12-G, grants a Right of Entry ("ROE") to **Rye Harbor Lobster Pound LLC (dba Rye Harbor Lobster Pound) ("RHLP")**, with an address of 91 Gulf Road, Derry, NH to use designated property of the State of New Hampshire, at the **Rye Harbor Marine Facility, 1870 Ocean Boulevard, Rye, NH** (the "Marine Facility") solely pursuant to the terms of this ROE and for the following purposes, and for no other uses unless expressly authorized in writing.

This ROE is given subject to the following conditions:

PREMISES: An area of land located within the **Marine Facility**, shown as "Building 6" on the location map attached as Exhibit A, which is incorporated herein by reference, for the placement of a 11 x 20 foot +/- wooden frame, single-story building ("**Building**") owned by **RHLP ("Premises")**.

PURPOSE OF ROE: To provide a location for the placement of the Building at the Marine Facility to be used for a food concession operation pursuant to a separate Concession Agreement per paragraph 27 below, directly related to the ROE holder's business operations at the Marine Facility; no other use of the Premises is permitted.

PERIOD OF USE: Period 1-July 1, 2023-April 30, 2024
Period 2-May 1, 2024-April 30, 2025

PARKING FEE: Period 1-\$5.00 per vehicle
Period 2-\$5.00 per vehicle, subject to change per paragraph 4

ROE FEE: Period 1-\$1,000.00
Period 2-\$1,250.00

1. PDA-DPH grants **RHLP** the right and privilege to place and maintain the Building on the Premises. Improvements or alterations to the interior or exterior of the Building are subject to the advance approval of PDA-DPH. **RHLP** shall ensure the Building is properly secured to the Premises and shall maintain the exterior and interior of the Building to ensure it is neat and attractive in appearance to the public, and agrees to periodically apply fresh coats of paint or stain, and take such other measures as may be required to meet this requirement, subject to the approval of PDA-DPH.
2. **RHLP** may not maintain, nor permit its customers to maintain, any tables and chairs on the Premises outside of the Building; a public area with tables and chairs may be made available at the Marine Facility by PDA-DPH at the discretion of PDA-DPH.
3. The term of this ROE shall be as set forth above as Period of Use. Requests for renewal shall be submitted to the DPH Director in writing no less than ninety (90) days prior to the expiration of Period 2.

Rye Harbor Lobster Pound, LLC (Building 6)

Right of Entry, Rye Harbor Marine Facility

2

4. **RHLP** customers shall have nonexclusive use of parking spaces situated at the Marine Facility parking lot, subject to PDA-DPH established parking fees as may be amended over time by the PDA-DPH. **RHLP** shall work cooperatively with PDA-DPH to ensure its customers abide by all traffic and parking requirements at the Marine Facility.
5. **RHLP** employees and agents shall have nonexclusive use of parking spaces situated at the Marine Facility parking lot. Notwithstanding the foregoing, **RHLP** shall be provided with employee seasonal parking passes in accordance with the provisions of Pda 604.03 or as agreed upon in any other lawful agreement made with PDA-DPH. **RHLP** agrees to require all of its employees and agents to park in the area designated by PDA-DPH as "Employee Parking," and further understands and agrees that any violation of this clause may result in the revocation of the employee's driving and parking privileges within the facility, as well as termination of this ROE.
6. **RHLP** agrees that its owners, employees, and agents, who are the owner or custodian of any animal, while at the Marine Facility, or within any building subject to any ROE where PDA-DPH is a party, shall at all times have said animal on a standard or retractable leash not greater than six (6) feet in length and shall promptly and properly dispose of any waste the animal excretes or garbage it causes to be scattered on the property.
7. **RHLP** is required to use the Marine Facility Pier in connection with its ROE operation, unless excused from such requirement in writing by PDA-DPH at its sole discretion, and as such shall obtain a separate Pier Use Permit which shall grant nonexclusive access to the Marine Facility pier, in accordance with N.H. Administrative Rules Part Pda 600.
8. **RHLP** shall obtain all necessary permits and licenses that are required to engage in its operations under this ROE and provide copies of them to PDA-DPH at the time of execution of this document. Required documents may include, but are not limited to, Pier Use Permit, Captains License(s), NH Fish and Game Fishing and/or Charter licenses, NH Department of Environmental Services permits, and NH Secretary of State Registration paperwork.
9. The scheduling of any/all departures and arrivals at the Premises and the Marine Facility in connection with any activity allowed under this ROE shall not interfere with the scheduled use of common areas or adjoining areas by other entities which actively conduct business at the Marine Facility and have previously been issued a permit or ROE(s) by PDA-DPH.
10. **RHLP** may utilize the area in front of the Building for loading and unloading only during the hours of 4:00 a.m. to 7:00 a.m. and 7:00 p.m. to 10:00 p.m. Any loading and unloading shall not unreasonably interfere with the scheduled use of common areas or adjoining areas by other entities which actively conduct business at the Marine Facility and have previously been issued a permit or ROE(s) by PDA-DPH. Loading and unloading outside of the above-referenced times shall only be permitted by the express authorization of the PDA-DPH. At no time shall **RHLP**, its employees, or agents, park in the designated fire lane or any other area designated as no parking by the PDA-DPH.
11. The Rental Fee for the Premises is due and shall be paid in full on or before July 1st each year of the term of this ROE. The rental fee shall be made payable to PDA-DPH and forwarded to PDA, 55 International Drive, Portsmouth, NH 03801. Written notification of any fee and rate increases will be provided to current ROE holders on or before February 1st of any given year during the term of the ROE and will become part of this ROE and effective on April 1st of that year.

12. **RHLP** shall obtain advance approval from the PDA-DPH for all signs and advertisements posted on the Premises. In all cases the decision of PDA-DPH on whether to approve the sign or advertisement shall be in its sole discretion and shall be final.
13. In order to guarantee the high quality of services and merchandise provided to the public from the Premises, any PDA-DPH questions relating to policies, prices, quality, cleanliness and services must be settled to the satisfaction of PDA-DPH. In making its decisions, PDA-DPH will be aided by members of its staff and such other officials of the State of New Hampshire as may be deemed appropriate and necessary.
14. All utilities to serve the Premises and the Building shall be at the sole responsibility and cost of **RHLP**.
15. **RHLP** shall be responsible for regular and routine cleaning of all areas of the Premises, the Building, and equipment where merchandise is stored, prepared or sold. **RHLP** shall be responsible for grounds pickup on the Premises and in common areas which are used by **RHLP** customers. All areas of the Premises, including but not limited to areas behind the Building, shall be maintained in a neat and orderly manner. The outdoor storage of equipment on the Premises may only be permitted in an area not to exceed 10 feet from the rear of the Building on the Premises, subject to the separate written approval of the PDA-DPH. If such written approval is given, such storage shall be neat and orderly at all times. Cleaning within this ROE shall include the picking up of all waste material and the routine cleaning of equipment, walls, floors, windows, fixtures, draperies, blinds, and garbage containers. The term "routine cleaning" shall imply all of the provisions associated with good housekeeping, including supplying materials and supplies that may be necessary to perform this service. **RHLP** shall be responsible for maintaining high standards of sanitation in accordance with the rules and regulations promulgated by the NH Department of Health and Human Services, Bureau of Food Protection, PDA-DPH, or any other governmental agency having jurisdiction over such matters. **RHLP** shall be responsible for promptly and regularly picking up garbage and rubbish generated by its operations or customers and depositing same at a location at the Marine Facility designated by PDA-DPH.
16. **RHLP** agrees to defend and indemnify the State of New Hampshire and PDA-DPH against and from any and all claims, judgments, damages, penalties, fines assessments, costs and expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, attorney's fees, consultant's fees and experts fees) resulting or arising during the term of this ROE:
 - A. From any condition of the Premises including the Building structure or improvements thereon for which **RHLP** has taken possession of hereunder;
 - B. From any breach or default of any obligation on the part of **RHLP** to be performed pursuant to the terms of this ROE or from any act or omission of **RHLP** or any of its agents, contractors, servants, employees, licensees or invitees; or
 - C. From any accident, injury, death, loss or damage whatsoever caused, to any person or property occurring during the term of this ROE, on or about the Marine Facility areas (including but not limited to piers, docks, gangways, building, and parking areas) arising out of or incidental to the use, management or control of the area(s) and activities which are the subject of this ROE.
17. On or before the effective date of this ROE, **RHLP** and any agent, contractor, or vendor of **RHLP** shall provide PDA-DPH with proof of required insurance coverage as outlined in Exhibit B. These are minimum insurance requirements designed to protect the interests of PDA-DPH and the State

of NH. Replacement costs of **RHLP** building and contents may not be protected under these terms. **RHLP** should consult with its insurance provider to ensure its individual insurance needs are met.

18. Notwithstanding the foregoing, no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of the State of New Hampshire and no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of PDA-DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire and PDA-DPH is reserved to the fullest extent allowed under law subject however to contractual claims arising under this ROE to the extent such are permitted by New Hampshire NH RSA Ch.492:8 as the same may be amended.
19. **RHLP** may terminate this ROE by giving PDA-DPH thirty (30) days' advanced written notice. In the event of such termination, **RHLP** shall remove the Building and all its possessions from the Premises prior to the expiration of the thirty (30) days' notice. The provisions of paragraph 16 shall survive termination.
20. PDA-DPH may terminate this ROE by giving **RHLP** thirty (30) days advanced written notice of termination in the event of the failure of **RHLP** to perform, keep or observe any of the provisions of this ROE and the failure of **RHLP** to correct the default or breach within the time specified by PDA-DPH. In the event of such termination, **RHLP** shall remove the Building and all its possessions from the Premises prior to the expiration of the thirty (30) days' notice.
21. This ROE may be terminated immediately by PDA-DPH in the event **RHLP** fails to provide proof of insurance coverage, or engages in any activity which is deemed by PDA-DPH in its sole discretion to compromise public safety or health. In the event of such termination, **RHLP** shall remove the Building and all its possessions from the Premises immediately. The provisions of paragraph 16 shall survive termination.
22. In the performance of this ROE, **RHLP** is in all respects an independent contractor and is neither an agent nor employee of the State of New Hampshire or PDA-DPH and that the State of New Hampshire and PDA-DPH shall, at no time, be legally responsible for any negligence or willful acts on the part of **RHLP** or any of its officers, employees, agents, or members resulting in either personal or property damage to any individual, firm or corporation. Neither **RHLP** nor any of its officers, employees, agents, or members shall have the authority to bind the State of New Hampshire or PDA-DPH nor are they entitled to any of the benefits, Workers Compensation or emoluments provided by the State of New Hampshire or PDA-DPH to its employees. **RHLP** agrees to hold the State of New Hampshire and PDA-DPH harmless against liability for loss or damage to its equipment or supplies or equipment rented or leased by the **RHLP** from others from any cause whatsoever, while they are located on state property either during the operating period or while in storage.
23. In connection with the performance of this contract, **RHLP** agrees to comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities, including those of PDA-DPH which shall impose any obligation or duty on **RHLP** and to procure and maintain all necessary licenses and permits required in connection with the operations described herein. Required documents may include, but are not limited to, Pier Use Permit, Federal and/or State Aquaculture Permit, Wholesale Marine Species License, Wetlands Board, Marine Safety, Captains License(s), applicable NH Fish and Game Fishing and/or Charter licenses, and NH Secretary of State Registration paperwork.

24. **RHLP** shall be familiar with and follow Administrative Rules Pda CHAPTER 600. The Rules are available from PDA-DPH upon request or can be viewed on the Division's web site, www.portofnh.org.
25. In accordance with Administrative Rule Pda 603.11 (a), **RHLP** acknowledges that camping or sleeping on state-owned commercial piers and associated facilities is prohibited.
26. In accordance with Administrative Rule Pda 603.11 (b), **RHLP** acknowledges the service and consumption of alcohol is prohibited unless permission has been granted with the terms of a written contractual agreement with PDA-DPH.
27. The sale of ready to eat, restaurant style food items and live lobsters and shellfish, is not permitted under this ROE; a separate Concession Agreement is required for the sale of such items from or on the Premises. Ready to eat, restaurant style food items shall include, but not be limited to, Hamburgers, hot dogs, sandwiches, lobster rolls, prepared shellfish, salads, mac and cheese, chowders/soups, packaged snacks, sodas, juices, coffee tea and breakfast items, and such other edible/consumable items sold in conjunction therewith, The determination of what constitutes such food items is in the sole discretion of the PDA-DPH, which determination shall be final.
28. **RHLP** is responsible for providing all necessary and required safety equipment and training to its employees and customers as may be required and appropriate to the uses allowed under this ROE.
29. Meetings shall be held when deemed necessary by PDA-DPH at a place and time to be agreed upon mutually by PDA-DPH and **RHLP** for the purpose of discussing current operational issues, presentation of official requests for changes in schedules, process, portions, products or policies, and other pertinent business which may arise. The PDA-DPH will be represented at these meetings by the Director of the DPH or his authorized representative(s) and such subordinate supervisory personnel fully acquainted with field operations as he/she shall designate. **RHLP** shall be represented, at a minimum, by one (1) officer/member of the company.
30. In the event the Premises, the Building, or any part thereof shall be destroyed by fire or unavoidable casualty so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, that portion of **RHLP** operation shall be suspended or abated until and if said Premises, Building, or any party thereof shall have been placed in proper condition for use by **RHLP**. PDA-DPH may terminate this contract in the event **RHLP** fails to repair or replace the Premises or Building within ninety (90) days of a fire or casualty. In the event of such termination, **RHLP** shall remain responsible for the costs of any repair or removal undertaken by PDA-DPH.
31. The Building and any equipment thereof which are the property of **RHLP** shall remain the property of **RHLP** and, upon termination of this ROE by lapse of time or otherwise, **RHLP** shall promptly remove same from the Premises. Upon the termination of this ROE, **RHLP** may offer for sale to PDA-DPH, at fair market value, any and all buildings and equipment owned by **RHLP**.
32. This ROE may not be assigned or transferred without the express written approval of the PDA-DPH. Consistent therewith, sale of the Building to another party does not guarantee that party will receive a Right of Entry for the Premises.
33. **RHLP** shall allow PDA-DPH, or such person as may be designated by PDA-DPH, access to the Premises and Building at all reasonable hours for the purpose of examining and inspecting said Premises and Building, or for any other purpose as may be required by this ROE. Except in the event of an emergency, PDA-DPH agrees that such access will not unduly affect the operations of

Rye Harbor Lobster Pound, LLC (Building 6)

Right of Entry, Rye Harbor Marine Facility

6

RHLP business.

34. **RHLP** may not self-fuel any boat used in connection with this ROE on the Premises or within the Premises. **RHLP** will be allowed to purchase fuel from an approved vendor (diesel only) or from the fuel service available at the Premises (diesel or gasoline). To purchase diesel fuel from an approved vendor, the vessel owner must have a fuel variance approved by the Office of the NH State Fire Marshall in accordance with Information Bulletin #2015-07, as may be amended from time to time.
35. To the extent applicable, **RHLP** agrees to hold the State of New Hampshire and PDA-DPH harmless with respect to taxes levied against the Premises subject to this ROE as a consequence of the application of RSA 72:23 I. **RHLP** agrees to pay, in addition to other payments, all properly assessed real and personal property taxes against the Premises subject to this ROE in accordance with the provisions of RSA 72:23 I. In the event **RHLP** shares a larger parcel of land with lessees or other ROE holders, it shall be obligated to pay only its pro rata share of any such taxes. Failure of **RHLP** to pay its duly assessed personal and real estate taxes when due, shall be cause to terminate this ROE by PDA-DPH. **RHLP** shall, in addition, reimburse PDA-DPH for any taxes paid by it pursuant to RSA 72:23 I as a result of **RHLP** failure to pay said taxes.
36. This ROE has been entered into in the State of New Hampshire and shall be interpreted under New Hampshire law.
37. This ROE may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank, signature page follows]

Rye Harbor Lobster Pound, LLC (Building 6)
Right of Entry, Rye Harbor Marine Facility
7

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Date:

6/29/23

Melanie Walsh
Witness

Paul E. Brean
Paul E. Brean, Executive Director, PDA

Rye Harbor Lobster Pound, LLC

Date:

6/23/23

Sylvia Cheever
Witness Signature

Sylvia Cheever
Witness Printed Name

Nathan Hanscom
Authorized Signature

Nathan Hanscom manager
Printed Name/Title

EXHIBIT A



EXHIBIT A - RYE HARBOR RIGHT OF ENTRY OVERVIEW AERIAL IMAGE

DESIGNED BY: MCR

DATE: 05/01/2023

SCALE: N.T.S.



PEASE DEVELOPMENT AUTHORITY

55 INTERNATIONAL DRIVE, PORTSMOUTH, NH 03801

© Copyright 2023 Pease Development Authority. All rights reserved.

EXHIBIT B

**MINIMUM INSURANCE REQUIREMENTS
RIGHT OF ENTRY HOLDERS, WITH AN ASSOCIATED BUILDING,
OPERATING ON THE PROPERTY OF THE STATE OF NH,
PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS (PDA-DPH)**

All Right of Entry holders with an associated building are required to provide a Certificate of Insurance ("COI") to the Pease Development Authority-Division of Ports and Harbors ("PDA-DPH") before the commencement of business on PDA-DPH property and to maintain such insurance while conducting such business. ROE holder shall ensure renewal certificates of insurance are on file with PDA-DPH prior to policy expiration dates. Failure to comply with the requirements set forth herein may cause a delay in opening for business on schedule or result in the immediate termination of this contract.

The following are the minimum requirements for insurance coverage:

1. **Commercial General Liability:** shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
2. **Automobile Liability:** \$1,000,000.00 automobile liability coverage.
3. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
4. **Additional Insureds:** State of New Hampshire, Pease Development Authority, and Division of Ports and Harbors, must be named as additional insureds under all liability coverages
5. **Certificate Holder:**
Pease Development Authority, Division of Ports of Harbors
555 Market St.
Portsmouth, NH 03801
6. **Notice of Cancellation:** A 30 day notice of cancellation (with the exception of a 10 day notice for non-payment of premium) must be provided.
7. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
8. **Primary Insurance:** A provision that any liability coverage required to be carried shall be primary and noncontributing with respect to any insurance carried by the PDA.
9. **Renewed COI's to be forwarded to additional insured prior to previous COI expiration date.**

For questions, please contact the Pease Development Authority Legal Department at (603) 433-6348.

From: Clark, Elizabeth Elizabeth.A.Clark@des.nh.gov
Subject: Screen snippet
Date: Jun 19, 2023 at 11:48:35 AM
To: sylviacheever@comcast.net

Elizabeth A. Clark
Executive Secretary
Land Resources Management
Water Division, NH Department of Environmental Services
P.O. Box 95
Concord, NH 03302-0095
Phone: (603) 271-3501
Email: Elizabeth.A.Clark@des.nh.gov

 [Follow us on Twitter!](#)

 [Like us on Facebook!](#)

[customer satisfaction survey](#)

Water - Subsurface Onestop - Application Detail

[Return to Query](#)[Return to Results](#)

Work Number:	200704636
Status:	APPROVED FOR CONSTRUCTION
Application Type:	CONSTRUCTION
Approval Number:	CA2007089843
Owner Name:	STATE OF NH
Site Street Address:	1870 OCEAN BOULEVARD RYE BEACH ROCKINGHAM
County:	ROCKINGHAM
Book / Page:	/
Map / Lot:	12 / 91
Designer:	CHRISTIAN P FREY 241 KINGSTON RD DANVILLE, NH 03819 PHONE: 603-382-1483
Installer:	
Approval Date:	9/12/2007
Operation Date:	
Do Not Backfill Date:	
Bedrooms:	
Flow:	300
Approval Conditions:	1. NOTE: WATER CONSERVATION DEVICES ARE RECOMMENDED. CONDITIONS: A. ALL WASTES TO BE COLLECTED BY THE HOLDING TANK AND PUMPED AS NEEDED BY A LICENSED SEPTAGE HAULER. B. SEPTAGE TO BE DISPOSED OF IN AN APPROVED OVERSEAL AREA.
DES Reviewer:	Contact DES at 271-3501

Application Documents:

Total Documents Returned: 0

you will need a PDF reader in order to view any documents. You can download a free reader from [Adobe](#).

JUN 26 2023

Pease Development Authority



PEASE
INTERNATIONAL
PORTS AND HARBORS

555 Market Street, Suite 1 Portsmouth, NH 03801

RIGHT OF ENTRY

Pease Development Authority, Division of Ports and Harbors ("PDA-DPH") with an address of 55 International Drive, Portsmouth, NH 03801, under the authority set forth in NH RSA 12-G, grants a Right of Entry ("ROE") to **Rye Harbor Lobster Pound LLC (dba Rye Harbor Lobster Pound) ("RHLP")**, with an address of **91 Gulf Road, Derry, NH** to use designated property of the State of New Hampshire, at the **Rye Harbor Marine Facility, 1870 Ocean Boulevard, Rye, NH** (the "Marine Facility") solely pursuant to the terms of this ROE and for the following purposes, and for no other uses unless expressly authorized in writing.

This ROE is given subject to the following conditions:

PREMISES: An area of land located within the **Marine Facility**, shown as "Building 5" on the location map attached as Exhibit A, which is incorporated herein by reference, for the placement of a 12 x 28 foot +/- wooden frame, single-story building ("**Building**") owned by **RHLP** ("**Premises**").

PURPOSE OF ROE: To provide a location for the placement of the Building at the Marine Facility to be used for a food concession operation pursuant to a separate Concession Agreement per paragraph 27 below, directly related to the ROE holder's business operations at the Marine Facility; no other use of the Premises is permitted.

PERIOD OF USE: Period 1-July 1, 2023-April 30, 2024
Period 2-May 1, 2024-April 30, 2025

PARKING FEE: Period 1-\$5.00 per vehicle
Period 2-\$5.00 per vehicle, subject to change per paragraph 4

ROE FEE: Period 1-\$1,000.00
Period 2-\$1,250.00

1. PDA-DPH grants **RHLP** the right and privilege to place and maintain the Building on the Premises. Improvements or alterations to the interior or exterior of the Building are subject to the advance approval of PDA-DPH. **RHLP** shall ensure the Building is properly secured to the Premises and shall maintain the exterior and interior of the Building to ensure it is neat and attractive in appearance to the public, and agrees to periodically apply fresh coats of paint or stain, and take such other measures as may be required to meet this requirement, subject to the approval of PDA-DPH.
2. **RHLP** may not maintain, nor permit its customers to maintain, any tables and chairs on the Premises outside of the Building; a public area with tables and chairs may be made available at the Marine Facility by PDA-DPH at the discretion of PDA-DPH.
3. The term of this ROE shall be as set forth above as Period of Use. Requests for renewal shall be submitted to the DPH Director in writing no less than ninety (90) days prior to the expiration of Period 2.

Rye Harbor Lobster Pound, LLC

Right of Entry, Rye Harbor Marine Facility

2

4. **RHLP** customers shall have nonexclusive use of parking spaces situated at the Marine Facility parking lot, subject to PDA-DPH established parking fees as may be amended over time by the PDA-DPH. **RHLP** shall work cooperatively with PDA-DPH to ensure its customers abide by all traffic and parking requirements at the Marine Facility.
5. **RHLP** employees and agents shall have nonexclusive use of parking spaces situated at the Marine Facility parking lot. Notwithstanding the foregoing, **RHLP** shall be provided with employee seasonal parking passes in accordance with the provisions of Pda 604.03 or as agreed upon in any other lawful agreement made with PDA-DPH. **RHLP** agrees to require all of its employees and agents to park in the area designated by PDA-DPH as "Employee Parking," and further understands and agrees that any violation of this clause may result in the revocation of the employee's driving and parking privileges within the facility, as well as termination of this ROE.
6. **RHLP** agrees that its owners, employees, and agents, who are the owner or custodian of any animal, while at the Marine Facility, or within any building subject to any ROE where PDA-DPH is a party, shall at all times have said animal on a standard or retractable leash not greater than six (6) feet in length and shall promptly and properly dispose of any waste the animal excretes or garbage it causes to be scattered on the property.
7. **RHLP** is required to use the Marine Facility Pier in connection with its ROE operation, unless excused from such requirement in writing by PDA-DPH at its sole discretion, and as such shall obtain a separate Pier Use Permit which shall grant nonexclusive access to the Marine Facility pier, in accordance with N.H. Administrative Rules Part Pda 600.
8. **RHLP** shall obtain all necessary permits and licenses that are required to engage in its operations under this ROE and provide copies of them to PDA-DPH at the time of execution of this document. Required documents may include, but are not limited to, Pier Use Permit, Captains License(s), NH Fish and Game Fishing and/or Charter licenses, NH Department of Environmental Services permits, and NH Secretary of State Registration paperwork.
9. The scheduling of any/all departures and arrivals at the Premises and the Marine Facility in connection with any activity allowed under this ROE shall not interfere with the scheduled use of common areas or adjoining areas by other entities which actively conduct business at the Marine Facility and have previously been issued a permit or ROE(s) by PDA-DPH.
10. **RHLP** may utilize the area in front of the Building for loading and unloading only during the hours of 4:00 a.m. to 7:00 a.m. and 7:00 p.m. to 10:00 p.m. Any loading and unloading shall not unreasonably interfere with the scheduled use of common areas or adjoining areas by other entities which actively conduct business at the Marine Facility and have previously been issued a permit or ROE(s) by PDA-DPH. Loading and unloading outside of the above-referenced times shall only be permitted by the express authorization of the PDA-DPH. At no time shall **RHLP**, its employees, or agents, park in the designated fire lane or any other area designated as no parking by the PDA-DPH.
11. The Rental Fee for the Premises is due and shall be paid in full on or before July 1st each year of the term of this ROE. The rental fee shall be made payable to PDA-DPH and forwarded to PDA, 55 International Drive, Portsmouth, NH 03801. Written notification of any fee and rate increases will be provided to current ROE holders on or before February 1st of any given year during the term of the ROE and will become part of this ROE and effective on April 1st of that year.

12. **RHLP** shall obtain advance approval from the PDA-DPH for all signs and advertisements posted on the Premises. In all cases the decision of PDA-DPH on whether to approve the sign or advertisement shall be in its sole discretion and shall be final.
13. In order to guarantee the high quality of services and merchandise provided to the public from the Premises, any PDA-DPH questions relating to policies, prices, quality, cleanliness and services must be settled to the satisfaction of PDA-DPH. In making its decisions, PDA-DPH will be aided by members of its staff and such other officials of the State of New Hampshire as may be deemed appropriate and necessary.
14. All utilities to serve the Premises and the Building shall be at the sole responsibility and cost of **RHLP**.
15. **RHLP** shall be responsible for regular and routine cleaning of all areas of the Premises, the Building, and equipment where merchandise is stored, prepared or sold. **RHLP** shall be responsible for grounds pickup on the Premises and in common areas which are used by **RHLP** customers. All areas of the Premises, including but not limited to areas behind the Building, shall be maintained in a neat and orderly manner. The outdoor storage of equipment on the Premises may only be permitted in an area not to exceed 10 feet from the rear of the Building on the Premises, subject to the separate written approval of the PDA-DPH. If such written approval is given, such storage shall be neat and orderly at all times. Cleaning within this ROE shall include the picking up of all waste material and the routine cleaning of equipment, walls, floors, windows, fixtures, draperies, blinds, and garbage containers. The term "routine cleaning" shall imply all of the provisions associated with good housekeeping, including supplying materials and supplies that may be necessary to perform this service. **RHLP** shall be responsible for maintaining high standards of sanitation in accordance with the rules and regulations promulgated by the NH Department of Health and Human Services, Bureau of Food Protection, PDA-DPH, or any other governmental agency having jurisdiction over such matters. **RHLP** shall be responsible for promptly and regularly picking up garbage and rubbish generated by its operations or customers and depositing same at a location at the Marine Facility designated by PDA-DPH.
16. **RHLP** agrees to defend and indemnify the State of New Hampshire and PDA-DPH against and from any and all claims, judgments, damages, penalties, fines assessments, costs and expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, attorney's fees, consultant's fees and experts fees) resulting or arising during the term of this ROE:
 - A. From any condition of the Premises including the Building structure or improvements thereon for which **RHLP** has taken possession of hereunder;
 - B. From any breach or default of any obligation on the part of **RHLP** to be performed pursuant to the terms of this ROE or from any act or omission of **RHLP** or any of its agents, contractors, servants, employees, licensees or invitees; or
 - C. From any accident, injury, death, loss or damage whatsoever caused, to any person or property occurring during the term of this ROE, on or about the Marine Facility areas (including but not limited to piers, docks, gangways, building, and parking areas) arising out of or incidental to the use, management or control of the area(s) and activities which are the subject of this ROE.
17. On or before the effective date of this ROE, **RHLP** and any agent, contractor, or vendor of **RHLP** shall provide PDA-DPH with proof of required insurance coverage as outlined in **Exhibit B**. These are minimum insurance requirements designed to protect the interests of PDA-DPH and the State

of NH. Replacement costs of **RHLP** building and contents may not be protected under these terms. **RHLP** should consult with its insurance provider to ensure its individual insurance needs are met.

18. Notwithstanding the foregoing, no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of the State of New Hampshire and no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of PDA-DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire and PDA-DPH is reserved to the fullest extent allowed under law subject however to contractual claims arising under this ROE to the extent such are permitted by New Hampshire NH RSA Ch.492:8 as the same may be amended.
19. **RHLP** may terminate this ROE by giving PDA-DPH thirty (30) days' advanced written notice. In the event of such termination, **RHLP** shall remove the Building and all its possessions from the Premises prior to the expiration of the thirty (30) days' notice. The provisions of paragraph 16 shall survive termination.
20. PDA-DPH may terminate this ROE by giving **RHLP** thirty (30) days advanced written notice of termination in the event of the failure of **RHLP** to perform, keep or observe any of the provisions of this ROE and the failure of **RHLP** to correct the default or breach within the time specified by PDA-DPH. In the event of such termination, **RHLP** shall remove the Building and all its possessions from the Premises prior to the expiration of the thirty (30) days' notice.
21. This ROE may be terminated immediately by PDA-DPH in the event **RHLP** fails to provide proof of insurance coverage, or engages in any activity which is deemed by PDA-DPH in its sole discretion to compromise public safety or health. In the event of such termination, **RHLP** shall remove the Building and all its possessions from the Premises immediately. The provisions of paragraph 16 shall survive termination.
22. In the performance of this ROE, **RHLP** is in all respects an independent contractor and is neither an agent nor employee of the State of New Hampshire or PDA-DPH and that the State of New Hampshire and PDA-DPH shall, at no time, be legally responsible for any negligence or willful acts on the part of **RHLP** or any of its officers, employees, agents, or members resulting in either personal or property damage to any individual, firm or corporation. Neither **RHLP** nor any of its officers, employees, agents, or members shall have the authority to bind the State of New Hampshire or PDA-DPH nor are they entitled to any of the benefits, Workers Compensation or emoluments provided by the State of New Hampshire or PDA-DPH to its employees. **RHLP** agrees to hold the State of New Hampshire and PDA-DPH harmless against liability for loss or damage to its equipment or supplies or equipment rented or leased by the **RHLP** from others from any cause whatsoever, while they are located on state property either during the operating period or while in storage.
23. In connection with the performance of this contract, **RHLP** agrees to comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities, including those of PDA-DPH which shall impose any obligation or duty on **RHLP** and to procure and maintain all necessary licenses and permits required in connection with the operations described herein. Required documents may include, but are not limited to, Pier Use Permit, Federal and/or State Aquaculture Permit, Wholesale Marine Species License, Wetlands Board, Marine Safety, Captains License(s), applicable NH Fish and Game Fishing and/or Charter licenses, and NH Secretary of State Registration paperwork.

24. **RHLP** shall be familiar with and follow Administrative Rules Pda CHAPTER 600. The Rules are available from PDA-DPH upon request or can be viewed on the Division's web site, www.portofnh.org.
25. In accordance with Administrative Rule Pda 603.11 (a), **RHLP** acknowledges that camping or sleeping on state-owned commercial piers and associated facilities is prohibited.
26. In accordance with Administrative Rule Pda 603.11 (b), **RHLP** acknowledges the service and consumption of alcohol is prohibited unless permission has been granted with the terms of a written contractual agreement with PDA-DPH.
27. The sale of ready to eat, restaurant style food items and live lobsters and shellfish, is not permitted under this ROE; a separate Concession Agreement is required for the sale of such items from or on the Premises. Ready to eat, restaurant style food items shall include, but not be limited to, Hamburgers, hot dogs, sandwiches, lobster rolls, prepared shellfish, salads, mac and cheese, chowders/soups, packaged snacks, sodas, juices, coffee tea and breakfast items, and such other edible/consumable items sold in conjunction therewith, The determination of what constitutes such food items is in the sole discretion of the PDA-DPH, which determination shall be final.
28. **RHLP** is responsible for providing all necessary and required safety equipment and training to its employees and customers as may be required and appropriate to the uses allowed under this ROE.
29. Meetings shall be held when deemed necessary by PDA-DPH at a place and time to be agreed upon mutually by PDA-DPH and **RHLP** for the purpose of discussing current operational issues, presentation of official requests for changes in schedules, process, portions, products or policies, and other pertinent business which may arise. The PDA-DPH will be represented at these meetings by the Director of the DPH or his authorized representative(s) and such subordinate supervisory personnel fully acquainted with field operations as he/she shall designate. **RHLP** shall be represented, at a minimum, by one (1) officer/member of the company.
30. In the event the Premises, the Building, or any part thereof shall be destroyed by fire or unavoidable casualty so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, that portion of **RHLP** operation shall be suspended or abated until and if said Premises, Building, or any party thereof shall have been placed in proper condition for use by **RHLP**. PDA-DPH may terminate this contract in the event **RHLP** fails to repair or replace the Premises or Building within ninety (90) days of a fire or casualty. In the event of such termination, **RHLP** shall remain responsible for the costs of any repair or removal undertaken by PDA-DPH.
31. The Building and any equipment thereof which are the property of **RHLP** shall remain the property of **RHLP** and, upon termination of this ROE by lapse of time or otherwise, **RHLP** shall promptly remove same from the Premises. Upon the termination of this ROE, **RHLP** may offer for sale to PDA-DPH, at fair market value, any and all buildings and equipment owned by **RHLP**.
32. This ROE may not be assigned or transferred without the express written approval of the PDA-DPH. Consistent therewith, sale of the Building to another party does not guarantee that party will receive a Right of Entry for the Premises.
33. **RHLP** shall allow PDA-DPH, or such person as may be designated by PDA-DPH, access to the Premises and Building at all reasonable hours for the purpose of examining and inspecting said Premises and Building, or for any other purpose as may be required by this ROE. Except in the event of an emergency, PDA-DPH agrees that such access will not unduly affect the operations of

RHLP business.

34. **RHLP** may not self-fuel any boat used in connection with this ROE on the Premises or within the Premises. **RHLP** will be allowed to purchase fuel from an approved vendor (diesel only) or from the fuel service available at the Premises (diesel or gasoline). To purchase diesel fuel from an approved vendor, the vessel owner must have a fuel variance approved by the Office of the NH State Fire Marshall in accordance with Information Bulletin #2015-07, as may be amended from time to time.
35. To the extent applicable, **RHLP** agrees to hold the State of New Hampshire and PDA-DPH harmless with respect to taxes levied against the Premises subject to this ROE as a consequence of the application of RSA 72:23 I. **RHLP** agrees to pay, in addition to other payments, all properly assessed real and personal property taxes against the Premises subject to this ROE in accordance with the provisions of RSA 72:23 I. In the event **RHLP** shares a larger parcel of land with lessees or other ROE holders, it shall be obligated to pay only its pro rata share of any such taxes. Failure of **RHLP** to pay its duly assessed personal and real estate taxes when due, shall be cause to terminate this ROE by PDA-DPH. **RHLP** shall, in addition, reimburse PDA-DPH for any taxes paid by it pursuant to RSA 72:23 I as a result of **RHLP** failure to pay said taxes.
36. This ROE has been entered into in the State of New Hampshire and shall be interpreted under New Hampshire law.
37. This ROE may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank, signature page follows]

Rye Harbor Lobster Pound, LLC
Right of Entry, Rye Harbor Marine Facility
7

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Date: 6/29/2023

Melanie Walsh
Witness

Paul E. Brean
Paul E. Brean, Executive Director, PDA

Rye Harbor Lobster Pound, LLC

Date: _____

Sylvia Cheever
Witness Signature

Sylvia Cheever
Witness Printed Name

Nathan Hanscom
Authorized Signature

Nathan Hanscom
Printed Name/Title

member
manager

EXHIBIT A



EXHIBIT A - RYE HARBOR RIGHT OF ENTRY OVERVIEW AERIAL IMAGE

DESIGNED BY: MCR

DATE: 05/01/2023

SCALE: N.T.S.



PEASE DEVELOPMENT AUTHORITY

55 INTERNATIONAL DRIVE, PORTSMOUTH, NH 03801

© 2023 Pease Development Authority. All rights reserved.

EXHIBIT B

**MINIMUM INSURANCE REQUIREMENTS
RIGHT OF ENTRY HOLDERS, WITH AN ASSOCIATED BUILDING,
OPERATING ON THE PROPERTY OF THE STATE OF NH,
PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS (PDA-DPH)**

All Right of Entry holders with an associated building are required to provide a Certificate of Insurance ("COI") to the Pease Development Authority-Division of Ports and Harbors ("PDA-DPH") before the commencement of business on PDA-DPH property and to maintain such insurance while conducting such business. ROE holder shall ensure renewal certificates of insurance are on file with PDA-DPH prior to policy expiration dates. Failure to comply with the requirements set forth herein may cause a delay in opening for business on schedule or result in the immediate termination of this contract.

The following are the minimum requirements for insurance coverage:

1. **Commercial General Liability:** shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
2. **Automobile Liability:** \$1,000,000.00 automobile liability coverage.
3. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
4. **Additional Insureds:** State of New Hampshire, Pease Development Authority, and Division of Ports and Harbors, must be named as additional insureds under all liability coverages
5. **Certificate Holder:**
Pease Development Authority, Division of Ports of Harbors
555 Market St.
Portsmouth, NH 03801
6. **Notice of Cancellation:** A 30 day notice of cancellation (with the exception of a 10 day notice for non-payment of premium) must be provided.
7. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
8. **Primary Insurance:** A provision that any liability coverage required to be carried shall be primary and noncontributing with respect to any insurance carried by the PDA.
9. **Renewed COI's to be forwarded to additional insured prior to previous COI expiration date.**

For questions, please contact the Pease Development Authority Legal Department at (603) 433-6348.

**PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS**

CONCESSION AGREEMENT

This concession agreement ("the Agreement"), effective July 01, 2023, is between the Pease Development Authority, Division of Ports and Harbors (PDA-DPH) 55 International Dr., Portsmouth, NH 03801 and Rye Harbor Lobster Pound, LLC (dba Rye Harbor Lobster Pound) ("Concessionaire"), with an address of 91 Gulf Road Derry, NH 03038. This Agreement is entered into with the Concessionaire in conjunction with two Rights-of-Entry (ROE) issued to the Concessionaire regarding the placement of two buildings (#s 5 and 6) on State property from which the Concessionaire shall operate. The terms of said ROEs, including but not limited to the meaning of the "Premises," are incorporated herein by reference. Termination of either of the ROEs shall result in an automatic termination of this Agreement.

1. RIGHT TO SELL

PDA-DPH grants to the Concessionaire the right and privilege to sell prepared food and beverage items normally associated with a Food Concession, generally including, but not limited to, the following items: Hamburgers, hot dogs, sandwiches, lobster rolls, prepared shellfish, salads, mac and cheese, chowders/soups, packaged snacks, sodas, juices, coffee tea and breakfast items, at Rye Harbor Marine Facility, Rye, NH (the "Marine Facility") in accordance with the terms contained herein including but not limited to Paragraph 13. In addition, the Concessionaire may sell live lobsters and shellfish as part of its food concession in accordance with the terms and conditions contained herein, including but limited to paragraph 13. Concessionaire must comply with all state and local laws governing the sale and distribution of prepared food items and live lobsters / shellfish. Concessionaire must obtain and maintain all necessary food and beverage permits. No alcoholic beverages shall be opened or consumed on state owned property in accordance with administrative rule Pda 603.11(b).

2. AGREEMENT TERM

Period 1 – July 1, 2023 – October 31, 2023

Period 2 – May 1, 2024 – October 31, 2024

3. CONCESSION FEE

As consideration for the privilege of operating the Food Concession from and on PDA-DPH property hereunder, the Concessionaire agrees to pay ten percent (10%) of its gross revenues, computed monthly, excluding only sales tax and gratuities, by the 15th of each month of operation and made payable to the Pease Development Authority, Division of Ports and Harbors and forwarded to PDA, 55 International Drive, Portsmouth, NH 03801 (the "Concession Fee"). By way of example, but not limitation, the concession fee for June shall be paid by July 15th. The minimum monthly Concession Fee due and payable to PDA-DPH shall be \$1,000.00, regardless of the number of days of operation in a given month or the applicable gross revenue for that month. If, during any of the months of May, September, and October, the Concessionaire does not operate on fifteen (15) days or more in a particular month (i.e. not open for business on at least fifteen (15) days that month), it may request a fifty percent (50%) reduction in the minimum

Rye Harbor Lobster Pound, LLC (dba Rye Harbor Lobster Pound)
CONCESSION

2

monthly Concession Fee of \$1,000.00, if that is the Concession Fee owed for that month, which PDA-DPH may grant, in writing, at its discretion. If Concessionaire does not operate during the entirety of any given calendar month of the Term (i.e. does not open for business on any day in a given month), it may request, in writing, a waiver of the minimum Concession Fee for that calendar month, which PDA-DPH may waive, in writing, at its discretion.

4. ACCOUNTING METHODS

All sales, including but not limited to cash, credit, debit, and electronic transactions, shall be recorded through a Point-of-Sale system or cash register to be provided by the Concessionaire. A daily sales report (in duplicate) shall be prepared by the Concessionaire listing the beginning and ending control readings for each system or register. Any corrections or errors in recording sales during the day shall be clearly explained on the sales report. Concessionaire shall provide PDA-DPH with a statement of Gross Receipts for each weekly period, ending each Sunday along with payment on the 15th of each month. Concessionaire's sales and business records shall contain sufficient information and detail in the event that PDA-DPH chooses to audit the gross sales data submitted by the Concessionaire. PDA-DPH reserves the right to require receipt of audited statements from the Concessionaire at the end of each fiscal year. PDA-DPH shall retain the right to review the Concessionaire's sales and business records in connection with its operations at the Marine Facility at such times as PDA-DPH deems necessary. The Concessionaire shall maintain its records in an orderly and accessible format. The Concessionaire shall make such records available for inspection, examination, and audit by the PDA-DPH and its agents. Records shall be maintained by the Concessionaire during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement.

5. CANCELLATION BY CONCESSIONAIRE

This Agreement shall be subject to termination by the Concessionaire regardless of grounds therefore by giving PDA-DPH thirty (30) days written notice. The provisions of paragraph 20 shall survive termination.

6. CANCELLATION BY PDA-DPH

This Agreement shall be subject to termination by PDA-DPH in the event of the failure of the Concessionaire to perform, keep and observe any of the conditions of the contract and the failure of the Concessionaire to correct the default or breach within a time specified by PDA-DPH. This contract may be terminated immediately by PDA-DPH in the event the Concessionaire fails to provide proof of insurance coverage or engages in any activity which is deemed, in the sole discretion of PDA-DPH, to compromise public safety and health. PDA-DPH may terminate this ROE for any other reason upon ninety (90) days advanced written notice of termination. The provisions of paragraph 20 shall survive termination.

7. RIGHT TO DECIDE QUESTIONS

The decision of PDA-DPH relative to the proper performance of the terms of the Agreement shall be final and conclusive on the parties hereto, and shall be final and conclusive as to each matter not covered in the Agreement and specifications that may arise in connection with the privileges granted, and also as to each matter which is not clearly covered herein.

8. ASSIGNMENT OR SUBCONTRACT

This Agreement may not be assigned or transferred without the express written approval of the PDA-DPH. Consistent therewith, sale of the building that is subject to the ROE to another party does not guarantee that party will receive an Agreement to operate a concession at the Premises.

9. RIGHT TO INSPECT

The Concessionaire shall allow PDA-DPH, or such person as may be designated by PDA-DPH, access to the Premises at all reasonable hours for the purpose of examining and inspecting said Premises, or for any other purpose as may be required by this Agreement. Except in the event of an emergency, PDA-DPH agrees that such access will not unduly affect the operations of the Concessionaire's business.

10. SANITATION

The Concessionaire shall be responsible for routine cleaning of all areas of the Premises where food or merchandise is stored, prepared, or sold and the equipment used in support of these activities. Concessionaire shall at all times be responsible for grounds pickup on the Premises and other areas of the Marine Facility where its customers consume food and beverage items purchased from the Concessionaire.

Cleaning within this proposal shall mean the picking up of all waste materials and the routine cleaning of walls, floors, windows, fixtures, draperies, blinds, tables, chairs, and garbage containers. The term "routine cleaning" shall imply all of the provisions associated with good housekeeping, including supplying materials and supplies that may be necessary to perform this service.

Concessionaire shall be responsible for maintaining high standards of sanitation in accordance with the rules and regulations promulgated by the NH Department of Health and Human Services, Bureau of Food Protection, PDA-DPH or any other governmental entity having jurisdiction over such matters. Any licenses or permits required to sell food and beverage items shall be prominently displayed on the Premises in plain view of the public. The Concessionaire shall maintain at least two (2) lined and covered durable garbage containers, each with a capacity of at least fifty (50) gallons, on the Premises, and shall be responsible for regularly picking up garbage and rubbish and depositing same at a location designated by PDA-DPH. Waste shall not be left in Concessionaire's garbage containers overnight.

11. ANIMALS

In accordance with NH RSA 466:44, the Concessionaire agrees that they will not allow any animal into the building identified in the ROE, with the exception of service animals as contained within the provisions of NH RSA 167-D.

12. EQUIPMENT

All equipment deemed necessary by the Concessionaire shall be obtained at its own expense. The Concessionaire shall be responsible for all necessary electrical, plumbing and ventilating installations in accordance with existing local, state, and federal codes. Sales and service layout areas proposed by the Concessionaire are subject to the approval of PDA-DPH.

13. ITEMS TO BE SOLD

Concessionaire shall provide PDA-DPH a written list of all menu items at least 30 days prior to commencement of each Period under the Agreement Term for PDA-DPH approval. In all instances, food and beverage items sold must be of good quality and meet the approval of PDA-DPH. Questions on quality will be referred to PDA-DPH whose judgment in all cases shall be final.

14. RECYCLABLE AND BIODEGRADABLE SERVING MATERIALS

The Concessionaire shall utilize serving supplies produced from recyclable or biodegradable materials.

15. PRICES

The rates and prices charged for all items sold shall be subject to the review and approval of PDA-DPH, which approval shall not be unreasonably withheld. In approving prices, primary consideration shall be given to the prices charged for similar merchandise furnished or sold outside the areas administered by the particular park area under similar conditions, with due regard being given to such other factors as may be deemed significant. Prices shall be legibly posted on the Premises by the Concessionaire in plain view of the public.

16. PERSONNEL

Concessionaire shall at all times maintain a staff of employees necessary for efficient operation of the business.

All employees of the Concessionaires shall be clad in neat and clean attire satisfactory to PDA-DPH. The Concessionaire shall employ only competent and satisfactory persons and whenever PDA-DPH shall notify the Concessionaire in writing that any person employed on the Premises, in its opinion, is incompetent, disorderly, unsanitary, or otherwise unsatisfactory, such conditions shall be corrected or such person shall be discharged and shall not again be employed without consent of the PDA-DPH. The Concessionaire shall have a competent and responsible supervisor in attendance at all times. No one other than employees of the Concessionaire will be allowed behind counters in the service and sales areas on the Premises without the approval of both the Concessionaire and PDA-DPH.

Employment of any elected official of the State of New Hampshire by the Concessionaire is prohibited during the period this Agreement is in force.

17. HOURS OF OPERATION

Dates and hours of operation will be set as a matter of written Agreement between the Concessionaire and PDA-DPH. As service to the public is the underlying objective, the decision of PDA-DPH will be final.

18. STATUTES, ORDINANCES AND REGULATIONS

In connection with the performance of this Agreement, the Concessionaire agrees to comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities, including those of PDA-DPH, which shall impose any obligation or duty on the Concessionaire and to procure all necessary licenses and permits required in connection with the operations described herein.

19. FINAL AUTHORITY

In order to guarantee the high quality of services and merchandise provided to the public any questions relating to policies, prices, quality, cleanliness, and services must be settled to the satisfaction of PDA-DPH. In making its decisions, PDA-DPH will be aided by members of its staff and such other officials of the State of New Hampshire as may be deemed appropriate and necessary.

20. PERFORMANCE & INDEMNIFICATION

The Concessionaire agrees to perform and faithfully observe and comply with the conditions, regulations and provisions prescribed herein and further to defend (with counsel acceptable to the State of New Hampshire and PDA-DPH) and indemnify the State of New Hampshire and PDA-DPH against and from any and all claims, judgments, damages, penalties, fines assessments, costs and expenses, liabilities, and losses (including without limitation, sums paid in settlement of claims, attorney's fees, consultant's fees and experts fees) resulting or arising during the term of this Agreement:

- A. From any condition of the Premises including any building structure or improvements thereon for which Concessionaire has taken possession of hereunder;
- B. From any breach or default of any obligation on the part of Concessionaire to be performed pursuant to the terms of this Agreement or from any act or omission of Concessionaire or any of its agents, contractors, servants, employees, licensees or invitees; or
- C. From any accident, injury, death, loss or damage whatsoever caused, to any person or property occurring during the term of this Agreement, on or about the Marine Facility areas (including but not limited to piers, docks, gangways, building, and parking areas) arising out of or incidental to the use, management or control of the area(s) and activities which are the subject of this Agreement.

21. RELATION TO STATE

In the performance of this Agreement, the Concessionaire is in all respects, an independent contractor and is neither an agent nor an employee of the State of New Hampshire or PDA-DPH and that the State of New Hampshire and PDA-DPH shall, at no time, be legally responsible for any negligence or willful acts on the part of said Concessionaire or any of its officers, employees, agents or members resulting in either personal or property damage to any individual, firm or corporation. Neither the Concessionaire nor any of its officers, employees, agents or members shall have authority to bind the State of New Hampshire and PDA-DPH nor are they entitled to any of the benefits, workers' compensation or emoluments provided by the State of New Hampshire and PDA-DPH to its employees.

The Concessionaire agrees to hold the State of New Hampshire and PDA-DPH harmless against liability for loss or damage to the Concessionaire's equipment or supplies or equipment rented or leased by the Concessionaire from others from any cause whatsoever, while they are located on state property either during the operating period or while in storage.

22. INSURANCE

On or before the effective date of this Agreement, Concessionaire and any agent, contractor, or vendor of Concessionaire shall provide PDA-DPH with proof of required insurance coverage as outlined in Exhibit A.

23. SOVEREIGN IMMUNITY

No provisions of this Agreement shall be deemed to constitute or effect a waiver of this sovereign immunity of the State of New Hampshire and no provision of this Agreement shall be deemed to constitute or effect a waiver of the sovereign immunity of PDA-DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire is reserved to the State of New Hampshire to the fullest extent allowed under law and the sovereign immunity of PDA-DPH is reserved to it to the fullest extent allowed under law subject, however, to contractual claims arising under this contract to the extent such are permitted by New Hampshire NH RSA Ch.491:8, as the same may be amended.

24. MEETINGS

Meetings shall be held when deemed necessary by PDA-DPH at a place and time to be agreed upon mutually by PDA-DPH and the Concessionaire for the purpose of discussing current operational problems, presentation of official requests for changes in schedules, process, portions, products or policies and other pertinent business which may arise.

The PDA-DPH will be represented at these meetings by the Director of the DPH or his/her authorized representative(s) and such subordinate supervisory personnel fully acquainted with field operations as he/she shall designate.

The Concessionaire shall be represented, at a minimum, by one (1) officer of the company or a corporation, a partner (if a partnership) or the owner.

25. AMENDMENT

This Agreement may be amended only by an instrument in writing and signed by both parties hereto.

26. CONSTRUCTION OF CONTRACT AND TERMS

This contract shall be construed in accordance with the laws of the State of New Hampshire and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

27. CONDITIONAL OBLIGATION OF THE STATE

Notwithstanding, anything to the contrary contained in this Agreement, it is understood and agreed to by the parties hereto that all obligations of the State of New Hampshire and/or PDA-DPH hereunder, including, without limitation, the continuance of payments or any other obligation hereunder are contingent upon the availability and continued appropriation of funds by the General Court of New Hampshire and made available for any payments or any other obligation hereunder, are contingent upon the availability and continued appropriation of funds by the General Court of New Hampshire and made available for any payments or any other obligation hereunder in excess of such available appropriated funds. In the event of a reduction or termination of said appropriated funds, the State of New Hampshire and/or PDA-DPH shall have the right to terminate this Agreement by giving the Concessionaire fifteen (15) days advance written notice of such termination and upon the expiration of said fifteen (15) days, this Agreement shall terminate.

Rye Harbor Lobster Pound, LLC (dba Rye Harbor Lobster Pound)
CONCESSION

7

28. WAIVER OF BREACH

No waiver by PDA-DPH of its right to enforce any provision hereof after default on the part of the Concessionaire shall be deemed a waiver of its right to enforce each and all of the provisions hereof upon any further or other default on the part of the Concessionaire.

29. ENTIRE AGREEMENT

This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties and supersedes all prior Agreements and understandings relating thereto.

[remainder of page intentionally left blank, signature page follows]

Rye Harbor Lobster Pound, LLC (dba Rye Harbor Lobster Pound)
CONCESSION
8

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Date: 4/29/2023

Melanie Walsh
Witness

Paul E. Brean
Paul E. Brean, Executive Director, PDA

Rye Harbor Lobster Pound LLC
(dba Rye Harbor Lobster Pound)

Date: 6/24/23

Sylvia Cheever
Witness Signature

Sylvia Cheever
Witness Printed Name

Nathan Hanscom
Authorized Signature

Nathan Hanscom Manager
Printed Name/Title

EXHIBIT A

**MINIMUM INSURANCE REQUIREMENTS
CONCESSION OPERATORS
OPERATING ON THE PROPERTY OF THE STATE OF NH,
PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS (PDA-DPH)**

All Concession Operators with an associated building and Right of Entry are required to provide a Certificate of Insurance ("COI") to the Pease Development Authority-Division of Ports and Harbors ("PDA-DPH") before the commencement of business on PDA-DPH property and to maintain such insurance while conducting such business. ROE holder shall ensure renewal certificates of insurance are on file with PDA-DPH prior to policy expiration dates. Failure to comply with the requirements set forth herein may cause a delay in opening for business on schedule or result in the immediate termination of this contract.

The following are the minimum requirements for insurance coverage:

1. **Commercial General Liability:** shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
2. **Automobile Liability:** One (1) million dollars automobile liability coverage.
3. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
4. **Additional Insureds:** State of New Hampshire, Pease Development Authority, and Division of Ports and Harbors, must be named as additional insureds under all liability coverages
5. **Certificate Holder:**
Pease Development Authority, Division of Ports of Harbors
555 Market St.
Portsmouth, NH 03801
6. **Notice of Cancellation:** A 30 day notice of cancellation (with the exception of a 10 day notice for non-payment of premium) must be provided.
7. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
8. **Primary Insurance:** A provision that any liability coverage required to be carried shall be primary and noncontributing with respect to any insurance carried by the PDA.
9. **Renewed COI's to be forwarded to additional insured prior to previous COI expiration date.**

For questions, please contact the Pease Development Authority Legal Department at (603) 433-6348.

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

RIGHT OF ENTRY

Pease Development Authority, Division of Ports and Harbors ("PDA-DPH") with an address of 55 International Drive, Portsmouth, NH 03801, under the authority set forth in NH RSA 12-G, grants a Right of Entry ("ROE") to **Granite State Whale Watch dba Rye Harborside ("Harborside")**, PO Box 768, Rye, NH 03871 to use designated property of the State of New Hampshire, at the **Rye Harbor Marine Facility, 1870 Ocean Boulevard, Rye, NH** (the "Marine Facility") solely pursuant to the terms of this ROE and for the following purposes, and for no other uses unless expressly authorized in writing.

This ROE is given subject to the following conditions:

- PREMISES:** An area of land located within the **Marine Facility**, shown as "Building 10" on the location map attached as **Exhibit A**, which is incorporated herein by reference, for the placement of a 20 x 14 foot +/- wooden frame, single-story building ("**Building**") owned by **Harborside ("Premises")**.
- PURPOSE OF ROE:** To provide a location for the placement of the Building at the Marine Facility to be used for a food concession operation pursuant to a separate Concession Agreement per paragraph 27 below, directly related to the ROE holder's business operations at the Marine Facility; no other use of the Premises is permitted.
- PERIOD OF USE:** Period 1-July 1, 2023-April 30, 2024
Period 2-May 1, 2024-April 30, 2025
- PARKING FEE:** Period 1-\$5.00 per vehicle
Period 2-\$5.00 per vehicle, subject to change per paragraph 4
- ROE FEE:** Period 1-\$1,000.00
Period 2-\$1,250.00

1. PDA-DPH grants **Harborside** the right and privilege to place and maintain the Building on the Premises. Improvements or alterations to the interior or exterior of the Building are subject to the advance approval of PDA-DPH. **Harborside** shall ensure the Building is properly secured to the Premises and shall maintain the exterior and interior of the Building to ensure it is neat and attractive in appearance to the public, and agrees to periodically apply fresh coats of paint or stain, and take such other measures as may be required to meet this requirement, subject to the approval of PDA-DPH.
2. **Harborside** may not maintain, nor permit its customers to maintain, any tables and chairs on the Premises outside of the Building; a public area with tables and chairs may be made available at the Marine Facility by PDA-DPH at the discretion of PDA-DPH.

Granite State Whale Watch dba Rye Harborside
Right of Entry, Rye Harbor Marine Facility

2

3. The term of this ROE shall be as set forth above as Period of Use. Requests for renewal shall be submitted to the DPH Director in writing no less than ninety (90) days prior to the expiration of Period 2.
4. **Harborside** customers shall have nonexclusive use of parking spaces situated at the Marine Facility parking lot, subject to PDA-DPH established parking fees as may be amended over time by the PDA-DPH. **Harborside** shall work cooperatively with PDA-DPH to ensure its customers abide by all traffic and parking requirements at the Marine Facility.
5. **Harborside** employees and agents shall have nonexclusive use of parking spaces situated at the Marine Facility parking lot. Notwithstanding the foregoing, **Harborside** shall be provided with employee seasonal parking passes in accordance with the provisions of Pda 604.03 or as agreed upon in any other lawful agreement made with PDA-DPH. **Harborside** agrees to require all of its employees and agents to park in the area designated by PDA-DPH as "Employee Parking," and further understands and agrees that any violation of this clause may result in the revocation of the employee's driving and parking privileges within the facility, as well as termination of this ROE.
6. **Harborside** agrees that its owners, employees, and agents, who are the owner or custodian of any animal, while at the Marine Facility, or within any building subject to any ROE where PDA-DPH is a party, shall at all times have said animal on a standard or retractable leash not greater than six (6) feet in length and shall promptly and properly dispose of any waste the animal excretes or garbage it causes to be scattered on the property.
7. **Harborside** is required to use the Marine Facility Pier in connection with its ROE operation, unless excused from such requirement in writing by PDA-DPH at its sole discretion, and as such shall obtain a separate Pier Use Permit which shall grant nonexclusive access to the Marine Facility pier, in accordance with N.H. Administrative Rules Part Pda 600.
8. **Harborside** shall obtain all necessary permits and licenses that are required to engage in its operations under this ROE and provide copies of them to PDA-DPH at the time of execution of this document. Required documents may include, but are not limited to, Pier Use Permit, Captains License(s), NH Fish and Game Fishing and/or Charter licenses, NH Department of Environmental Services permits, and NH Secretary of State Registration paperwork.
9. The scheduling of any/all departures and arrivals at the Premises and the Marine Facility in connection with any activity allowed under this ROE shall not interfere with the scheduled use of common areas or adjoining areas by other entities which actively conduct business at the Marine Facility and have previously been issued a permit or ROE(s) by PDA-DPH.
10. **Harborside** may utilize the area in front of the Building for loading and unloading only during the hours of 4:00 a.m. to 7:00 a.m. and 7:00 p.m. to 10:00 p.m. Any loading and unloading shall not unreasonably interfere with the scheduled use of common areas or adjoining areas by other entities which actively conduct business at the Marine Facility and have previously been issued a permit or ROE(s) by PDA-DPH. Loading and unloading outside of the above-referenced times shall only be permitted by the express authorization of the PDA-DPH. At no time shall **Harborside**, its employees, or agents, park in the designated fire lane or any other area designated as no parking by the PDA-DPH.
11. The Rental Fee for the Premises is due and shall be paid in full on or before July 1st each year of the term of this ROE. The rental fee shall be made payable to PDA-DPH and forwarded to PDA, 55 International Drive, Portsmouth, NH 03801. Written notification of any fee and rate increases

Granite State Whale Watch dba Rye Harborside
Right of Entry, Rye Harbor Marine Facility

3

will be provided to current ROE holders on or before February 1st of any given year during the term of the ROE and will become part of this ROE and effective on April 1st of that year.

12. **Harborside** shall obtain advance approval from the PDA-DPH for all signs and advertisements posted on the Premises. In all cases the decision of PDA-DPH on whether to approve the sign or advertisement shall be in its sole discretion and shall be final.
13. In order to guarantee the high quality of services and merchandise provided to the public from the Premises, any PDA-DPH questions relating to policies, prices, quality, cleanliness and services must be settled to the satisfaction of PDA-DPH. In making its decisions, PDA-DPH will be aided by members of its staff and such other officials of the State of New Hampshire as may be deemed appropriate and necessary.
14. All utilities to serve the Premises and the Building shall be at the sole responsibility and cost of **Harborside**.
15. **Harborside** shall be responsible for regular and routine cleaning of all areas of the Premises, the Building, and equipment where merchandise is stored, prepared or sold. **Harborside** shall be responsible for grounds pickup on the Premises and in common areas which are used by **Harborside's** customers. All areas of the Premises, including but not limited to areas behind the Building, shall be maintained in a neat and orderly manner. The outdoor storage of equipment on the Premises may only be permitted in an area not to exceed 10 feet from the rear of the Building on the Premises, subject to the separate written approval of the PDA-DPH. If such written approval is given, such storage shall be neat and orderly at all times. Cleaning within this ROE shall include the picking up of all waste material and the routine cleaning of equipment, walls, floors, windows, fixtures, draperies, blinds, and garbage containers. The term "routine cleaning" shall imply all of the provisions associated with good housekeeping, including supplying materials and supplies that may be necessary to perform this service. **Harborside** shall be responsible for maintaining high standards of sanitation in accordance with the rules and regulations promulgated by the NH Department of Health and Human Services, Bureau of Food Protection, PDA-DPH, or any other governmental agency having jurisdiction over such matters. **Harborside** shall be responsible for promptly and regularly picking up garbage and rubbish generated by its operations or customers and depositing same at a location at the Marine Facility designated by PDA-DPH.
16. **Harborside** agrees to defend and indemnify the State of New Hampshire and PDA-DPH against and from any and all claims, judgments, damages, penalties, fines assessments, costs and expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, attorney's fees, consultant's fees and experts fees) resulting or arising during the term of this ROE:
 - A. From any condition of the Premises including the Building structure or improvements thereon for which **Harborside** has taken possession of hereunder;
 - B. From any breach or default of any obligation on the part of **Harborside** to be performed pursuant to the terms of this ROE or from any act or omission of **Harborside** or any of its agents, contractors, servants, employees, licensees or invitees; or
 - C. From any accident, injury, death, loss or damage whatsoever caused, to any person or property occurring during the term of this ROE, on or about the Marine Facility areas (including but not limited to piers, docks, gangways, building, and parking areas) arising out of or incidental to the use, management or control of the area(s) and activities which are the subject of this ROE.

17. On or before the effective date of this ROE, **Harborside** and any agent, contractor, or vendor of **Harborside** shall provide PDA-DPH with proof of required insurance coverage as outlined in **Exhibit B**. These are minimum insurance requirements designed to protect the interests of PDA-DPH and the State of NH. Replacement costs of **Harborside's** building and contents may not be protected under these terms. **Harborside** should consult with its insurance provider to ensure its individual insurance needs are met.
18. Notwithstanding the foregoing, no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of the State of New Hampshire and no provision of this ROE shall be deemed to constitute or effect a waiver of the sovereign immunity of PDA-DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire and PDA-DPH is reserved to the fullest extent allowed under law subject however to contractual claims arising under this ROE to the extent such are permitted by New Hampshire NH RSA Ch.492:8 as the same may be amended.
19. **Harborside** may terminate this ROE by giving PDA-DPH thirty (30) days' advanced written notice. In the event of such termination, **Harborside** shall remove the Building and all its possessions from the Premises prior to the expiration of the thirty (30) days' notice. The provisions of paragraph 16 shall survive termination.
20. PDA-DPH may terminate this ROE by giving **Harborside** thirty (30) days advanced written notice of termination in the event of the failure of **Harborside's** to perform, keep or observe any of the provisions of this ROE and the failure of **Harborside** to correct the default or breach within the time specified by PDA-DPH. In the event of such termination, **Harborside** shall remove the Building and all its possessions from the Premises prior to the expiration of the thirty (30) days' notice.
21. This ROE may be terminated immediately by PDA-DPH in the event **Harborside** fails to provide proof of insurance coverage, or engages in any activity which is deemed by PDA-DPH in its sole discretion to compromise public safety or health. In the event of such termination, **Harborside** shall remove the Building and all its possessions from the Premises immediately. The provisions of paragraph 16 shall survive termination.
22. In the performance of this ROE, **Harborside** is in all respects an independent contractor and is neither an agent nor employee of the State of New Hampshire or PDA-DPH and that the State of New Hampshire and PDA-DPH shall, at no time, be legally responsible for any negligence or willful acts on the part of **Harborside** or any of its officers, employees, agents, or members resulting in either personal or property damage to any individual, firm or corporation. Neither **Harborside** nor any of its officers, employees, agents, or members shall have the authority to bind the State of New Hampshire or PDA-DPH nor are they entitled to any of the benefits, Worker's Compensation or emoluments provided by the State of New Hampshire or PDA-DPH to its employees. **Harborside** agrees to hold the State of New Hampshire and PDA-DPH harmless against liability for loss or damage to its equipment or supplies or equipment rented or leased by the **Harborside** from others from any cause whatsoever, while they are located on state property either during the operating period or while in storage.

Granite State Whale Watch dba Rye Harborside

Right of Entry, Rye Harbor Marine Facility

5

23. In connection with the performance of this contract, **Harborside** agrees to comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities, including those of PDA-DPH which shall impose any obligation or duty on **Harborside** and to procure and maintain all necessary licenses and permits required in connection with the operations described herein. Required documents may include, but are not limited to, Pier Use Permit, Federal and/or State Aquaculture Permit, Wholesale Marine Species License, Wetlands Board, Marine Safety, Captains License(s), applicable NH Fish and Game Fishing and/or Charter licenses, and NH Secretary of State Registration paperwork.
24. **Harborside** shall be familiar with and follow Administrative Rules Pda CHAPTER 600. The Rules are available from PDA-DPH upon request or can be viewed on the Division's web site, www.portofnh.org.
25. In accordance with Administrative Rule Pda 603.11 (a), **Harborside** acknowledges that camping or sleeping on state-owned commercial piers and associated facilities is prohibited.
26. In accordance with Administrative Rule Pda 603.11 (b), **Harborside** acknowledges the service and consumption of alcohol is prohibited unless permission has been granted with the terms of a written contractual agreement with PDA-DPH.
27. The sale of ready to eat, restaurant style food items is not permitted under this ROE; a separate Concession Agreement is required for the sale of such items from or on the Premises. Ready to eat, restaurant style food items shall include, but not be limited to, sandwiches, wraps, burgers, hotdogs, soups & chowders, salads, prepared seafood, and such other edible/consumable items sold in conjunction therewith. The determination of what constitutes such food items is in the sole discretion of the PDA-DPH, which determination shall be final.
28. **Harborside** is responsible for providing all necessary and required safety equipment and training to its employees and customers as may be required and appropriate to the uses allowed under this ROE.
29. Meetings shall be held when deemed necessary by PDA-DPH at a place and time to be agreed upon mutually by PDA-DPH and **Harborside** for the purpose of discussing current operational issues, presentation of official requests for changes in schedules, process, portions, products or policies, and other pertinent business which may arise. The PDA-DPH will be represented at these meetings by the Director of the DPH or his authorized representative(s) and such subordinate supervisory personnel fully acquainted with field operations as he/she shall designate. **Harborside** shall be represented, at a minimum, by one (1) officer/member of the company.
30. In the event the Premises, the Building, or any part thereof shall be destroyed by fire or unavoidable casualty so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, that portion of **Harborside's** operation shall be suspended or abated until and if said Premises, Building, or any party thereof shall have been placed in proper condition for use by **Harborside**. PDA-DPH may terminate this contract in the event **Harborside** fails to repair or replace the Premises or Building within ninety (90) days of a fire or casualty. In the event of such termination, **Harborside** shall remain responsible for the costs of any repair or removal undertaken by PDA-DPH.

31. The Building and any equipment thereof which are the property of **Harborside** shall remain the property of **Harborside** and, upon termination of this ROE by lapse of time or otherwise, **Harborside** shall promptly remove same from the Premises. Upon the termination of this ROE, **Harborside** may offer for sale to PDA-DPH, at fair market value, any and all buildings and equipment owned by **Harborside**.
32. This ROE may not be assigned or transferred without the express written approval of the PDA-DPH. Consistent therewith, sale of the Building to another party does not guarantee that party will receive a Right of Entry for the Premises.
33. **Harborside** shall allow PDA-DPH, or such person as may be designated by PDA-DPH, access to the Premises and Building at all reasonable hours for the purpose of examining and inspecting said Premises and Building, or for any other purpose as may be required by this ROE. Except in the event of an emergency, PDA-DPH agrees that such access will not unduly affect the operations of **Harborside's** business.
34. **Harborside** may not self-fuel any boat used in connection with this ROE on the Premises or within the Premises. **Harborside** will be allowed to purchase fuel from an approved vendor (diesel only) or from the fuel service available at the Premises (diesel or gasoline). To purchase diesel fuel from an approved vendor, the vessel owner must have a fuel variance approved by the Office of the NH State Fire Marshall in accordance with Information Bulletin #2015-07, as may be amended from time to time.
35. To the extent applicable, **Harborside** agrees to hold the State of New Hampshire and PDA-DPH harmless with respect to taxes levied against the Premises subject to this ROE as a consequence of the application of RSA 72:23 I. **Harborside** agrees to pay, in addition to other payments, all properly assessed real and personal property taxes against the Premises subject to this ROE in accordance with the provisions of RSA 72:23 I. In the event **Harborside** shares a larger parcel of land with lessees or other ROE holders, it shall be obligated to pay only its pro rata share of any such taxes. Failure of **Harborside** to pay its duly assessed personal and real estate taxes when due, shall be cause to terminate this ROE by PDA-DPH. **Harborside** shall, in addition, reimburse PDA-DPH for any taxes paid by it pursuant to RSA 72:23 I as a result of **Harborside's** failure to pay said taxes.
36. This RoE has been entered into in the State of New Hampshire and shall be interpreted under New Hampshire law.
37. This ROE may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank, signature page follows]

Granite State Whale Watch dba Rye Harborside
Right of Entry, Rye Harbor Marine Facility
7

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Date: 5/26/23

Raeline A. O'Neil
Witness Raeline A. O'Neil

Paul E. Brean
Paul E. Brean, Executive Director, PDA

Granite State Whale Watch dba Rye Harborside

Date: 5/23/23

Mandy Katherine Huff
Witness Signature

Mandy Katherine Huff
Witness Printed Name

Peter Reynolds
Authorized Signature

PETER REYNOLDS, PRES.
Printed Name/Title



EXHIBIT A - RYE HARBOR RIGHT OF ENTRY OVERVIEW AERIAL IMAGE

DESIGNED BY: MCR

DATE: 05/01/2023

SCALE: N.T.S.



PEASE DEVELOPMENT AUTHORITY

55 INTERNATIONAL DRIVE, PORTSMOUTH, NH 03801

m:\engineer\port area\ports rye harbor\rye harbor shacks exhibit a

EXHIBIT B

MINIMUM INSURANCE REQUIREMENTS RIGHT OF ENTRY HOLDERS, WITH AN ASSOCIATED BUILDING, OPERATING ON THE PROPERTY OF THE STATE OF NH, PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS (PDA-DPH)

All Right of Entry holders with an associated building are required to provide a Certificate of Insurance ("COI") to the Pease Development Authority-Division of Ports and Harbors ("PDA-DPH") before the commencement of business on PDA-DPH property and to maintain such insurance while conducting such business. ROE holder shall ensure renewal certificates of insurance are on file with PDA-DPH prior to policy expiration dates. Failure to comply with the requirements set forth herein may cause a delay in opening for business on schedule or result in the immediate termination of this contract.

The following are the minimum requirements for insurance coverage:

1. **Commercial General Liability:** shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
2. **Automobile Liability:** \$1,000,000 automobile liability coverage.
3. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
4. **Additional Insureds:** State of New Hampshire, Pease Development Authority, and Division of Ports and Harbors, must be named as additional insureds under all liability coverages
5. **Certificate Holder:**
Pease Development Authority, Division of Ports of Harbors
555 Market St.
Portsmouth, NH 03801
6. **Notice of Cancellation:** A 30 day notice of cancellation (with the exception of a 10 day notice for non-payment of premium) must be provided.
7. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
8. **Primary Insurance:** A provision that any liability coverage required to be carried shall be primary and noncontributing with respect to any insurance carried by the PDA.
9. **Renewed COI's to be forwarded to additional insured prior to previous COI expiration date.**

For questions, please contact the Pease Development Authority Legal Department at (603) 433-6348.

CONCESSION AGREEMENT

This concession agreement ("the Agreement"), effective July 01, 2023, is between the Pease Development Authority, Division of Ports and Harbors (PDA-DPH) 55 International Dr., Portsmouth, NH 03801 and **Granite State Whale Watch Inc., dba Rye Harborside** ("Concessionaire"), **PO Box 768, Rye, NH 03871**. This Agreement is entered into with the Concessionaire in conjunction with a Right-of-Entry (ROE) issued to the Concessionaire regarding the placement of a building on State property from which the Concessionaire shall operate. The terms of said ROE, including but not limited to the meaning of the "Premises," are incorporated herein by reference. Termination of the ROE shall result in an automatic termination of this Agreement.

1. RIGHT TO SELL

PDA-DPH grants to the Concessionaire the right and privilege to sell prepared food and beverage items normally associated with a Food Concession, generally including, but not limited to, the following items: Hamburgers, hot dogs, sandwiches, lobster rolls, prepared shellfish, salads, mac and cheese, chowders/soups, packaged snacks, sodas, juices, coffee tea and breakfast items, at Rye Harbor Marine Facility, Rye, NH (the "Marine Facility") in accordance with the terms contained herein including but not limited to Paragraph 13. Concessionaire must comply with all state and local laws governing the sale and distribution of prepared food items. Concessionaire must obtain and maintain all necessary food and beverage permits. No alcoholic beverages shall be opened or consumed on state owned property in accordance with administrative rule Pda 603.11(b).

2. AGREEMENT TERM

Period 1 – July 1, 2023 – October 31, 2023

Period 2 – May 1, 2024 – October 31, 2024

3. CONCESSION FEE

As consideration for the privilege of operating the Food Concession from and on PDA-DPH property hereunder, the Concessionaire agrees to pay ten percent (10%) of its gross revenues, computed monthly, excluding only sales tax and gratuities, by the 15th of each month of operation and made payable to the Pease Development Authority, Division of Ports and Harbors and forwarded to PDA, 55 International Drive, Portsmouth, NH 03801 (the "Concession Fee"). By way of example, but not limitation, the concession fee for June shall be paid by July 15th. The minimum monthly Concession Fee due and payable to PDA-DPH shall be \$1,000.00, regardless of the number of days of operation in a given month or the applicable gross revenue for that month. If, during any of the months of May, September, and October, the Concessionaire does not operate on fifteen (15) days or more in a particular month (i.e. not open for business on at least fifteen (15) days that month), it may request a fifty percent (50%) reduction in the minimum monthly Concession Fee of \$1,000.00, if that is the Concession Fee owed for that month, which PDA-DPH may grant, in writing, at its discretion. If Concessionaire does not operate during the entirety of any given calendar month of the Term (i.e. does not open for business on any day in a given month), it may request, in writing, a waiver of the Concession Fee for that calendar month, which PDA-DPH may waive, in writing, at its discretion.

4. ACCOUNTING METHODS

All sales, including but not limited to cash, credit, debit, and electronic transactions, shall be recorded through a Point-of-Sale system or cash register to be provided by the Concessionaire. A daily sales report (in duplicate) shall be prepared by the Concessionaire listing the beginning and ending control readings for each system or register. Any corrections or errors in recording sales during the day shall be clearly explained on the sales report. Concessionaire shall provide PDA-DPH with a statement of Gross Receipts for each weekly period, ending each Sunday along with payment on the 15th of each month. Concessionaire's sales and business records shall contain sufficient information and detail in the event that PDA-DPH chooses to audit the gross sales data submitted by the Concessionaire. PDA-DPH reserves the right to require receipt of audited statements from the Concessionaire at the end of each fiscal year. PDA-DPH shall retain the right to review the Concessionaire's sales and business records in connection with its operations at the Marine Facility at such times as PDA-DPH deems necessary. The Concessionaire shall maintain its records in an orderly and accessible format. The Concessionaire shall make such records available for inspection, examination, and audit by the PDA-DPH and its agents. Records shall be maintained by the Concessionaire during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement.

5. CANCELLATION BY CONCESSIONAIRE

This Agreement shall be subject to termination by the Concessionaire regardless of grounds therefore by giving PDA-DPH thirty (30) days written notice. The provisions of paragraph 20 shall survive termination.

6. CANCELLATION BY PDA-DPH

This Agreement shall be subject to termination by PDA-DPH in the event of the failure of the Concessionaire to perform, keep and observe any of the conditions of the contract and the failure of the Concessionaire to correct the default or breach within a time specified by PDA-DPH. This contract may be terminated immediately by PDA-DPH in the event the Concessionaire fails to provide proof of insurance coverage or engages in any activity which is deemed, in the sole discretion of PDA-DPH, to compromise public safety and health. PDA-DPH may terminate this ROE for any other reason upon ninety (90) days advanced written notice of termination. The provisions of paragraph 20 shall survive termination.

7. RIGHT TO DECIDE QUESTIONS

The decision of PDA-DPH relative to the proper performance of the terms of the Agreement shall be final and conclusive on the parties hereto, and shall be final and conclusive as to each matter not covered in the Agreement and specifications that may arise in connection with the privileges granted, and also as to each matter which is not clearly covered herein.

8. ASSIGNMENT OR SUBCONTRACT

This Agreement may not be assigned or transferred without the express written approval of the PDA-DPH. Consistent therewith, sale of the building that is subject to the ROE to another party does not guarantee that party will receive an Agreement to operate a concession at the Premises.

9. RIGHT TO INSPECT

The Concessionaire shall allow PDA-DPH, or such person as may be designated by PDA-DPH, access to the Premises at all reasonable hours for the purpose of examining and inspecting said Premises, or for any other purpose as may be required by this Agreement. Except in the event of an emergency, PDA-DPH agrees that such access will not unduly affect the operations of the Concessionaire's business.

10. SANITATION

The Concessionaire shall be responsible for routine cleaning of all areas of the Premises where food or merchandise is stored, prepared, or sold and the equipment used in support of these activities. Concessionaire shall at all times be responsible for grounds pickup on the Premises and other areas of the Marine Facility where its customers consume food and beverage items purchased from the Concessionaire.

Cleaning within this proposal shall mean the picking up of all waste materials and the routine cleaning of walls, floors, windows, fixtures, draperies, blinds, tables, chairs, and garbage containers. The term "routine cleaning" shall imply all of the provisions associated with good housekeeping, including supplying materials and supplies that may be necessary to perform this service.

Concessionaire shall be responsible for maintaining high standards of sanitation in accordance with the rules and regulations promulgated by the NH Department of Health and Human Services, Bureau of Food Protection, PDA-DPH or any other governmental entity having jurisdiction over such matters. Any licenses or permits required to sell food and beverage items shall be prominently displayed on the Premises in plain view of the public. The Concessionaire shall maintain at least two (2) lined and covered durable garbage containers, each with a capacity of at least fifty (50) gallons, on the Premises, and shall be responsible for regularly picking up garbage and rubbish and depositing same at a location designated by PDA-DPH. Waste shall not be left in Concessionaire's garbage containers overnight.

11. ANIMALS

In accordance with NH RSA 466:44, the Concessionaire agrees that they will not allow any animal into the building identified in the ROE, with the exception of service animals as contained within the provisions of NH RSA 167-D.

12. EQUIPMENT

All equipment deemed necessary by the Concessionaire shall be obtained at its own expense. The Concessionaire shall be responsible for all necessary electrical, plumbing and ventilating installations in accordance with existing local, state, and federal codes. Sales and service layout areas proposed by the Concessionaire are subject to the approval of PDA-DPH.

13. ITEMS TO BE SOLD

Concessionaire shall provide PDA-DPH a written list of all menu items at least 30 days prior to commencement of each Period under the Agreement Term for PDA-DPH approval. In all instances, food and beverage items sold must be of good quality and meet the approval of PDA-DPH. Questions on quality will be referred to PDA-DPH whose judgment in all cases shall be final.

14. RECYCLABLE AND BIODEGRADABLE SERVING MATERIALS

The Concessionaire shall utilize serving supplies produced from recyclable or biodegradable materials.

15. PRICES

The rates and prices charged for all items sold shall be subject to the review and approval of PDA-DPH, which approval shall not be unreasonably withheld. In approving prices, primary consideration shall be given to the prices charged for similar merchandise furnished or sold outside the areas administered by the particular park area under similar conditions, with due regard being given to such other factors as may be deemed significant. Prices shall be legibly posted on the Premises by the Concessionaire in plain view of the public.

16. PERSONNEL

Concessionaire shall at all times maintain a staff of employees necessary for efficient operation of the business.

All employees of the Concessionaires shall be clad in neat and clean attire satisfactory to PDA-DPH. The Concessionaire shall employ only competent and satisfactory persons and whenever PDA-DPH shall notify the Concessionaire in writing that any person employed on the Premises, in its opinion, is incompetent, disorderly, unsanitary, or otherwise unsatisfactory, such conditions shall be corrected or such person shall be discharged and shall not again be employed without consent of the PDA-DPH. The Concessionaire shall have a competent and responsible supervisor in attendance at all times. No one other than employees of the Concessionaire will be allowed behind counters in the service and sales areas on the Premises without the approval of both the Concessionaire and PDA-DPH.

Employment of any elected official of the State of New Hampshire by the Concessionaire is prohibited during the period this Agreement is in force.

17. HOURS OF OPERATION

Dates and hours of operation will be set as a matter of written Agreement between the Concessionaire and PDA-DPH. As service to the public is the underlying objective, the decision of PDA-DPH will be final.

18. STATUTES, ORDINANCES AND REGULATIONS

In connection with the performance of this Agreement, the Concessionaire agrees to comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities, including those of PDA-DPH, which shall impose any obligation or duty on the Concessionaire and to procure all necessary licenses and permits required in connection with the operations described herein.

19. FINAL AUTHORITY

In order to guarantee the high quality of services and merchandise provided to the public any questions relating to policies, prices, quality, cleanliness, and services must be settled to the satisfaction of PDA-DPH. In making its decisions, PDA-DPH will be aided by members of its staff and such other officials of the State of New Hampshire as may be deemed appropriate and necessary.

20. PERFORMANCE & INDEMNIFICATION

The Concessionaire agrees to perform and faithfully observe and comply with the conditions, regulations and provisions prescribed herein and further to defend (with counsel acceptable to the State of New Hampshire and PDA-DPH) and indemnify the State of New Hampshire and PDA-DPH against and from any and all claims, judgments, damages, penalties, fines assessments, costs and expenses, liabilities, and losses (including without limitation, sums paid in settlement of claims, attorney's fees, consultant's fees and experts fees) resulting or arising during the term of this Agreement:

- A. From any condition of the Premises including any building structure or improvements thereon for which Concessionaire has taken possession of hereunder;
- B. From any breach or default of any obligation on the part of Concessionaire to be performed pursuant to the terms of this Agreement or from any act or omission of Concessionaire or any of its agents, contractors, servants, employees, licensees or invitees; or
- C. From any accident, injury, death, loss or damage whatsoever caused, to any person or property occurring during the term of this Agreement, on or about the Marine Facility areas (including but not limited to piers, docks, gangways, building, and parking areas) arising out of or incidental to the use, management or control of the area(s) and activities which are the subject of this Agreement.

21. RELATION TO STATE

In the performance of this Agreement, the Concessionaire is in all respects, an independent contractor and is neither an agent nor an employee of the State of New Hampshire or PDA-DPH and that the State of New Hampshire and PDA-DPH shall, at no time, be legally responsible for any negligence or willful acts on the part of said Concessionaire or any of its officers, employees, agents or members resulting in either personal or property damage to any individual, firm or corporation. Neither the Concessionaire nor any of its officers, employees, agents or members shall have authority to bind the State of New Hampshire and PDA-DPH nor are they entitled to any of the benefits, workers' compensation or emoluments provided by the State of New Hampshire and PDA-DPH to its employees.

The Concessionaire agrees to hold the State of New Hampshire and PDA-DPH harmless against liability for loss or damage to the Concessionaire's equipment or supplies or equipment rented or leased by the Concessionaire from others from any cause whatsoever, while they are located on state property either during the operating period or while in storage.

22. INSURANCE

On or before the effective date of this Agreement, Concessionaire and any agent, contractor, or vendor of Concessionaire shall provide PDA-DPH with proof of required insurance coverage as outlined in Exhibit A.

23. SOVEREIGN IMMUNITY

No provisions of this Agreement shall be deemed to constitute or effect a waiver of this sovereign immunity of the State of New Hampshire and no provision of this Agreement shall be deemed to constitute or effect a waiver of the sovereign immunity of PDA-DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire is reserved to the State of New Hampshire to the fullest extent allowed under law and the sovereign immunity of PDA-DPH is reserved to it to the fullest extent allowed under law subject, however, to contractual claims arising under this contract to the extent such are permitted by New Hampshire NH RSA Ch.491:8, as the same may be amended.

24. MEETINGS

Meetings shall be held when deemed necessary by PDA-DPH at a place and time to be agreed upon mutually by PDA-DPH and the Concessionaire for the purpose of discussing current operational problems, presentation of official requests for changes in schedules, process, portions, products or policies and other pertinent business which may arise.

The PDA-DPH will be represented at these meetings by the Director of the DPH or his/her authorized representative(s) and such subordinate supervisory personnel fully acquainted with field operations as he/she shall designate.

The Concessionaire shall be represented, at a minimum, by one (1) officer of the company or a corporation, a partner (if a partnership) or the owner.

25. AMENDMENT

This Agreement may be amended only by an instrument in writing and signed by both parties hereto.

26. CONSTRUCTION OF CONTRACT AND TERMS

This contract shall be construed in accordance with the laws of the State of New Hampshire and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

27. CONDITIONAL OBLIGATION OF THE STATE

Notwithstanding, anything to the contrary contained in this Agreement, it is understood and agreed to by the parties hereto that all obligations of the State of New Hampshire and/or PDA-DPH hereunder, including, without limitation, the continuance of payments or any other obligation hereunder are contingent upon the availability and continued appropriation of funds by the General Court of New Hampshire and made available for any payments or any other obligation hereunder, are contingent upon the availability and continued appropriation of funds by the General Court of New Hampshire and made available for any payments or any other obligation hereunder in excess of such available appropriated funds. In the event of a reduction or termination of said appropriated funds, the State of New Hampshire and/or PDA-DPH shall

Granite State Whale Watch Inc., dba Rye Harborside

CONCESSION

7

have the right to terminate this Agreement by giving the Concessionaire fifteen (15) days advance written notice of such termination and upon the expiration of said fifteen (15) days, this Agreement shall terminate.

28. WAIVER OF BREACH

No waiver by PDA-DPH of its right to enforce any provision hereof after default on the part of the Concessionaire shall be deemed a waiver of its right to enforce each and all of the provisions hereof upon any further or other default on the part of the Concessionaire.

29. ENTIRE AGREEMENT

This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties and supersedes all prior Agreements and understandings relating thereto.

[remainder of page intentionally left blank, signature page follows]

Granite State Whale Watch Inc., dba Rye Harborside
CONCESSION

8

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Date: 5/26/23

Raeline A. O'Neil
Witness Raeline A. O'Neil

Paul E. Brean
Paul E. Brean, Executive Director, PDA

Granite State Whale Watch Inc.,
dba Rye Harborside

Date: 5/23/23

Mandy Katherine S. Huff
Witness Signature

Mandy Katherine Huff
Witness Printed Name

Peter Riordanos
Authorized Signature
Peter Riordanos, Pres.
Printed Name/Title

EXHIBIT A

**MINIMUM INSURANCE REQUIREMENTS
CONCESSION OPERATORS
OPERATING ON THE PROPERTY OF THE STATE OF NH,
PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS (PDA-DPH)**

All Concession Operators with an associated building and Right of Entry are required to provide a Certificate of Insurance ("COI") to the Pease Development Authority-Division of Ports and Harbors ("PDA-DPH") before the commencement of business on PDA-DPH property and to maintain such insurance while conducting such business. ROE holder shall ensure renewal certificates of insurance are on file with PDA-DPH prior to policy expiration dates. Failure to comply with the requirements set forth herein may cause a delay in opening for business on schedule or result in the immediate termination of this contract.

The following are the minimum requirements for insurance coverage:

1. **Commercial General Liability:** shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
2. **Automobile Liability:** One (1) million dollars automobile liability coverage.
3. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
4. **Additional Insureds:** State of New Hampshire, Pease Development Authority, and Division of Ports and Harbors, must be named as additional insureds under all liability coverages
5. **Certificate Holder:**
Pease Development Authority, Division of Ports of Harbors
555 Market St.
Portsmouth, NH 03801
6. **Notice of Cancellation:** A 30 day notice of cancellation (with the exception of a 10 day notice for non-payment of premium) must be provided.
7. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
8. **Primary Insurance:** A provision that any liability coverage required to be carried shall be primary and noncontributing with respect to any insurance carried by the PDA.
9. **Renewed COI's to be forwarded to additional insured prior to previous COI expiration date.**

For questions, please contact the Pease Development Authority Legal Department at (603) 433-6348.

(/online/Home/) Back to Home (/online)

Business Information

Business Details

Business Name:	RYE HARBOR LOBSTER POUND LLC	Business ID:	877870
Business Type:	Domestic Limited Liability Company	Business Status:	Good Standing
Management Style:	Manager Managed		
Business Creation Date:	08/04/2021	Name in State of Formation:	Not Available
Date of Formation in Jurisdiction:	N/A		
Principal Office Address:	1875 Ocean Blvd Unit 5, Rye, NH, 03870, USA	Mailing Address:	91 Gulf Rd, Derry, NH, 03038, USA
Citizenship / State of Formation:	Domestic/New Hampshire		
		Last Annual Report Year:	2025
		Next Report Year:	2026
Duration:	Perpetual		
Business Email:	natehanscom@comcast.net	Phone #:	603-401-9214
Notification Email:	natehanscom@comcast.net	Fiscal Year End Date:	NONE

Principal Purpose

S.No	NAICS Code	NAICS Subcode
1	OTHER / Retail Trade	Fish and Seafood Markets

Page 1 of 1, records 1 to 1 of 1

Principals Information

Name/Title	Business Address
Nathan Hanscom / Manager	91 Gulf Rd, Derry, NH, 03038, USA
Sylvia Cheever / Manager	91 Gulf rd, Derry, NH, 03038, USA

Page 1 of 1, records 1 to 2 of 2

Registered Agent Information

Name: Nathan Hanscom

Registered Office Address: 91 Gulf Rd, Derry, NH, 03038, USA

Registered Mailing Address: 91 Gulf Rd, Derry, NH, 03038, USA

Trade Name Information

No Trade Name(s) associated to this business.

Trade Name Owned By

No Records to View.

Trademark Information

Trademark Number	Trademark Name	Business Address	Mailing Address
------------------	----------------	------------------	-----------------

No records to view.

[Filing History](#)

[Address History](#)

[View All Other Addresses](#)

[Name History](#)

[Shares](#)

[Businesses Linked to Registered Agent](#)

[Return to Search](#)

[Back](#)

NH Department of State, 107 North Main St. Room 204, Concord, NH 03301

[Contact Us](#)

[\(/online/Home/ContactUS\)](#)

© 2022 State of New Hampshire.

(/online/Home/) Back to Home (/online)

Business Information

Business Details

Business Name:	RYE HARBOR LOBSTER LLC	Business ID:	868352
Business Type:	Domestic Limited Liability Company	Business Status:	Good Standing
Management Style:	Member Managed		
Business Creation Date:	04/14/2021	Name in State of Formation:	Not Available
Date of Formation in Jurisdiction:	N/A		
Principal Office Address:	919 WASHINGTON RD, RYE, NH, 03870, USA	Mailing Address:	91 Gulf Rd, Derry, NH, 03038, USA
Citizenship / State of Formation:	Domestic/New Hampshire		
		Last Annual Report Year:	2025
		Next Report Year:	2026
Duration:	Perpetual		
Business Email:	ryeharborlobster@gmail.com	Phone #:	603-944-1812
Notification Email:	ryeharborlobster@gmail.com	Fiscal Year End Date:	NONE

Principal Purpose

S.No	NAICS Code	NAICS Subcode
1	Accommodation and Food Services	Limited Service Restaurants

Page 1 of 1, records 1 to 1 of 1

Principals Information

Name/Title	Business Address
Sylvia Cheever / Manager	1870 Ocean Blvd, Unit 6, Rye, NH, 03870, USA
Sylvia Cheever / Member	991 Washington Rd, Rye, NH, 03870, USA
Nathan Hanscom / Member	91 Gulf rd, Derry, NH, 03038, USA

Page 1 of 1, records 1 to 3 of 3

Registered Agent Information

Name: Sylvia Cheever

Registered Office Address: 91 Gulf RD, Derry, NH, 03038, USA

Registered Mailing Address: 91 Gulf RD, Derry, NH, 03038, USA

Trade Name Information

Business Name	Business ID	Business Status
THE HUNGRY LOBSTER (/online/BusinessInquire/TradeNameInformation?businessID=ShzX6%2F8C8II%3D)	889045	Active

Trade Name Owned By

Name	Title	Address
------	-------	---------

Trademark Information

Trademark Number	Trademark Name	Business Address	Mailing Address
No records to view.			

[Filing History](#)

[Address History](#)

[View All Other Addresses](#)

[Name History](#)

[Shares](#)

[Businesses Linked to Registered Agent](#)

[Return to Search](#)

[Back](#)

NH Department of State, 107 North Main St. Room 204, Concord, NH 03301

[Contact Us](#)

[\(/online/Home/ContactUS\)](#)

© 2022 State of New Hampshire.

**PEASE DEVELOPMENT AUTHORITY
BOARD OF DIRECTORS' MEETING
MINUTES**

Tuesday, March 11, 2025

Presiding: Steve Duprey, Chairman
Present: Neil Levesque, Vice Chair; Thomas G. Ferrini, Treasurer; Steve Fournier; Susan B. Parker, Karen Conard, and Brian Semprini
Attending: Paul E. Brean, Pease Development Authority ("PDA") Executive Director; Anthony I. Blenkinsop, Deputy Director / General Counsel; Josh Wyatt, Deputy General Counsel; Suzy Anzalone, Director of Finance; Michael R. Mates, Director of Engineering; Tom Maciel, Operations Manager, Division of Ports and Harbors; Jared Sheehan, Environmental Compliance Manager; Chasen Congreves, Director of Operations; Andrew Pomeroy, Director of Aviation Planning & Regulatory Compliance; Greg Siegenthaler, IT Director; and Raeline A. O'Neil, Executive Administrative Assistant

AGENDA

I. Call to Order:

Chairman Steve Duprey ("Duprey") called the meeting to order; the meeting commenced at **8:33** a.m.

Duprey announced, "After the Pease Development Authority Board of Directors' meeting on January 7, 2025, and subsequent media inquires and reports, Pease Development Authority would like to state for the record not withstanding what was said at the prior meeting and in media reports, that Director Geno Marconi, has not retired and remains a current employee of the Pease Development Authority – Division of Ports and Harbors ("DPH"), currently on paid administrative leave."

II. Acceptance of Meeting Minutes: Board of Directors' Meeting of January 7, 2025

Director Parker **moved** the **motion** and Director Levesque **seconded** to accept the meeting minutes of the Board of Directors' meeting held on January 7, 2025.

Discussion: None. **Disposition:** Resolved **unanimous** vote for; motion **carried**.

Chairman Duprey indicated moving item V.A.1. up in the agenda, prior to holding Public Comment.

V. A. Approval:

1. Rye and Hampton Harbor Marine Facilities – Shack Rights of Entry – One Year Extension

Director Semprini **moved** the **motion** and Director Fournier **seconded** that based on the advice of the Attorney General's Office, the Pease Development Authority Board of Directors authorizes the Executive Director to finalize and enter into one (1) year extensions of the Rights-of-Entry ("ROE") for the placement of private commercial shacks at both Rye and Hampton Harbors for those current ROE holders that request an extension in writing; further, for the two 2023/2024 concession agreement holders, the Executive Director is authorized to allow the sale of restaurant-style, ready-to-

eat food for the 2025 season under their extended rights of entry; all in accordance with the memorandum of Executive Director Paul Brean, dated March 4, 2025, attached hereto and incorporated herein.

Discussion: Director Levesque (“Levesque”) inquired of steps to be taken this season regarding enforcement of procedures, collection of fees, and following of Pda 600 rules; indicated he believes collection of fees and enforcement was intermittent or overlooked for some, but not others. Brean spoke to a successful 2024 season at Rye Harbor, documentation through management and enforcement; Operations Manager, Tom Maciel (“Maciel”) understands the importance and need of consistency for all.

Disposition: Resolved unanimous vote for; motion carried.

III. Public Comment:

Adam Baker – Appreciative of the one-year extension of ROEs. He also spoke about the need for extended terms (10-years) for business planning purposes; and harbor upgrades (i.e., handicap accessible bathrooms, hot water in bathrooms, breakwater repair, parking lot work).

Jim Fernald – RSA 12-G promotes development of NH ports and that they remain working ports. Spoke to Rye Harbor, investigation and charges against Marconi, shacks, moorings and employment at DPH. Inquired into new employment policy (conflict of interest / commercial use moorings), without approval from Board, input from Port Committee or Port Advisory Committee; why conflict for employees utilizing resources available where they work and spoke to the impacts on commercial fishermen.

Craig Scherck – Hampton Beach Parasail (“HBP”) spoke to consideration of increase parking fee structure being different at each harbor due to business / customer base. HBP patrons’ time runs in roughly 1.25-hour increments and he believes \$10/day for short term is too high. Appreciate consideration of extended ROE term, but extended term (10-years) would allow ability to build / manage business.

Duprey spoke briefly to parking, indicated the consultant talking to current stakeholders, and last August someone inquired whether we [PDA] had the right to approve ROEs, PDA is still awaiting guidance so the right thing to provide is the one-year term.

Chris Snow – Introduced himself as newly elected Chair of the Port Advisory Council who looks forward to working with the Board.

Representative Peggy Balboni – Appreciated response to February 24, 2025, letter. Inquired into public outreach sessions regarding the study and asked for regular updates. Brean indicated the study has commenced, anticipates dates, a minimum of two public workshops (morning and evening) to be finalized shortly and developing a page for the [PDA] website to contain miscellaneous information regarding the study. Inquired about the conclusion (end of summer) and moving forward; Brean spoke to receipt of a comprehensive study so policy decisions can be made.

Duprey spoke to the needs at the harbor, state legislature making substantial capital appropriations for harbors (i.e., flood mitigation, septic systems, handicap bathrooms) and the fact that PDA is not allowed to utilize Tradeport funds to support DPH needs. DPH needs to generate its own revenue to support its needs, absent appropriations.

Bréan spoke to the recent king tides over the past couple of years and the appreciation of DPH staff and their efforts to get the harbors operational as a feat in itself along with the financial costs incurred.

Balboni spoke to reduction of funding at both the state and federal levels, affecting all budgets.

IV. Committees:

A. Report:

1. Golf Committee

Director Fournier spoke to the meeting held on Monday, March 10, 2025, and discussions regarding the event center concepts, 2025 Pease Golf Course ("PGC") fees, approval of the subscription for aboutGOLF and the potential for online booking of the simulator.

V. Old Business:

A. Approval:

1. Rye and Hampton Harbor Marine Facilities – Shack Rights of Entry – One Year Extension *(this item was moved, reviewed and approved earlier in the meeting)*
2. Lonza Biologics, Inc. – 101 International Drive – Concept Approval for Canopy Sunshades

Director Levesque moved the motion and Director Conard seconded that the Pease Development Authority Board of Directors hereby approves of Lonza Biologics, Inc.'s ("Lonza") concept plan to construct canopy sunshades as an enhancement to the expanded patio adjacent to the new cafeteria at Lonza's main building at 101 International Drive; all in accordance with the terms and conditions set forth in the memorandum of Michael R. Mates, P.E., Director of Engineering, dated March 10, 2025.

Discussion: Bréan spoke to Lonza's new patio area, approval would allow for shade and shelter of its employees utilizing the new patio area.

Disposition: Resolved unanimous vote for; motion carried.

VI. Consent Agenda Items:

A. Consent Agenda Approvals:

1. Turf Products Inc. - Pease Golf Course – Two Riding Greens Mowers
2. Legal Services
3. Hoyle Tanner & Associates – Scope and Fee – Portsmouth International Airport at Pease - Taxiway "A" South and Hold Bay Enabling Work
4. Jacobs Engineering – Scope and Fee - Skyhaven – Parking Lot Improvements Route 108 Survey
5. Jalbert Leasing, Inc. d/b/a C&J Bus Lines– Right of Entry – 42 Durham Street; 47 Durham Street, and Hampton Street (North and South lots) for Valet Parking
6. McFarland & Johnson – Scope and Fee – Portsmouth International Airport at Pease - Airport Layout Plan Update with Narrative

Director Conard moved the motion and Director Levesque seconded that the Pease Development Authority Board of Directors hereby moves that item numbers 1, 2, 4, 5 and 6 from the consent agenda list below be approved as a single consent agenda item, and that the proposed motions included for each be incorporated into such approval as the operative motion for each item.

1. **Turf Products Inc. - Pease Golf Course – Two Riding Greens Mowers**
2. **Legal Services**
4. **Jacobs Engineering – Scope and Fee - Skyhaven – Parking Lot Improvements Route 108 Survey**
5. **Jalbert Leasing, Inc. d/b/a C&J Bus Lines– Right of Entry – 42 Durham Street; 47 Durham Street, and Hampton Street (North and South lots) for Valet Parking**
6. **McFarland & Johnson – Scope and Fee – Portsmouth International Airport at Pease - Airport Layout Plan Update with Narrative**

Discussion: Conard stated that Director Parker (“Parker”) requested item 3 be pulled from the consent agenda.

Director Ferrini (“Ferrini”) abstained from voting regarding item 5 (Jalbert Leasing, Inc.).

Disposition: Resolved unanimous vote for; motion carried.

3. **Hoyle Tanner & Associates – Scope and Fee – Portsmouth International Airport at Pease - Taxiway “A” South and Hold Bay Enabling Work**

Director Parker moved the motion and Director Fournier seconded that the Pease Development Authority (“PDA”) Board of Directors approves of and authorizes the Executive Director to:

- (1) **accept up to \$481,650.00 in AIP funding and up to \$12,675.00 from New Hampshire Department of Transportation in matching funds, for Portsmouth International Airport at Pease (PSM) Taxiway “A” South and South Hold Bay Design;**
- (2) **expend up to \$12,675.00 in PDA funds for Portsmouth International Airport at Pease (PSM) Taxiway “A” South and South Hold Bay Design;**
- (3) **amend the Hoyle Tanner & Associates on-call contract to include the design, bidding, and permitting of Taxiway “A” South and the South Hold Bay for a price not to exceed \$505,366.00, with invoicing capped at \$150,000.00 (covering only data collection and permitting work) until grant funding has been approved; and**
- (4) **execute any and all documents necessary to receive funds, apply for permits, and complete the design work as described.**

All in accordance with the memorandum of Michael R. Mates, P.E., Director of Engineering, dated February 27, 2025.

Discussion: Parker asked when paving in this area was last performed; Brean stated, approximately 23 years ago. FAA will only fund pavement at the “end of life”, this is a critical area to Alpha taxiway which needs to be done.

Fournier spoke to federal funds being in flux and asked what happens if funds aren’t received; Brean stated this was programed in FY25 and has been funded. Brean further stated the Governor’s budgets for FY 26 and 27, there is no funding for airport specific projects.

Duprey asked of potential projects down the road; Brean spoke to an effect on Air Traffic Control Tower, another Alpha project on the north side of field, snow removal equipment, terminal enhancements etc.

Disposition: Resolved **unanimous** vote for; motion **carried**.

B. Consent Agenda Approval with Waiver:

1. Pease Golf Course - aboutGOLF Simulator Subscription
2. Equipment and Vehicles Replacement Tires – Bridgestone Americas Tire Operations, LLC

Director Fournier **moved** the **motion** and Director Conard **seconded** that the Pease Development Authority (“PDA”) Board of Directors hereby moves that item numbers **1-2** from the consent agenda with waivers listed below be approved as a single consent agenda with waivers item, and that the proposed motions included for each be incorporated into such approval as the operative motion for each item.

1. Pease Golf Course - aboutGOLF Simulator Subscription
2. Equipment and Vehicles Replacement Tires – Bridgestone Americas Tire Operations, LLC

Discussion: Conard spoke to appreciation of staff providing informative / supporting documents so the Board can make appropriate inquires / determinations.

Duprey affirmed Conard’s remarks and appreciated the time taken so the Board can be provided an informed analysis of requests.

Disposition: Resolved **unanimous** roll call vote for; motion **carried**.

VII. Finance:

A. Executive Summary

B. Reports:

1. **FY2025 Financial Report for the Seven-Month Period Ending January 31, 2025**
2. **Cash Flow Projections for the Nine Month Period Ending November 30, 2025**

Finance Director Suzy Anzalone (“Anzalone”) spoke to the Executive Summary and two (2) reports and indicated on a year-to-date (“YTD”) basis the consolidated revenues are trending 2.1% higher than budgeted and operating expenses under budget by 2.4%. Anzalone reminded the Board of a previous grant-related expenditure listed in operating expenses, meaning some of PDA’s other line items are performing favorably; the expenditure referenced was grant funded and included non-operating income.

Anzalone spoke to the net operating loss, after depreciation, performing favorably against what PDA budgeted.

Each of the business units are performing favorably; clarified Division of Ports and Harbors’ (“DPH”) operating income is negative; result of the expenditure previously discussed. Anzalone spoke to the income being in non-operating income but by removing the expenditure, DPH would be even for the year.

Ferrini inquired into the cost of the Rye Harbor modifications performed after the two storms; Anzalone indicated approximately \$500,000. Further she indicated that while some FEMA funding has been received, not all has.

Parker inquired about working fuel pumps, except those at the Portsmouth Fish Pier, as a way to explain the reduction in income; Brean spoke to the operational pumps at Rye and a pump down in Hampton.

Anzalone spoke to capital expenditures, cash inflow and outflow over the next nine months (to include grant and non-grant related projects / expenditures) outlined in the reports. Further, she spoke of the preparation of the capital budget which in the past has been presented at the April Board meeting. However, Anzalone stated it will be presented along with the Operating Budget at the June Board meeting.

Relating to DPH, Anzalone spoke to the inflow and outflow of funds over the next nine months (to include grant and non-grant related projects/expenditures). Anzalone spoke of a reduction in the cash flow due to some anticipated internally funded projects (i.e., hoist, truck scale, crack sealing, PFP projects, etc.).

Duprey spoke of the new PFP building, funding, and internally funded projects by DPH at the PFP.

Duprey spoke to budget hearings at the state level and list of priorities for endorsement and discussion. Brean affirmed and indicated consideration for the dredge at the Market Street Terminal, the Rye / Hampton Revetment Repair for the storm damage / surge; and demolition / new office building for the Market Street Terminal as the warehouse facility is failing.

C. Approval:

1. Finance Software

Director Ferrini moved the motion and Director Fournier seconded that the PDA Board of Directors authorizes the Executive Director to finalize negotiations and enter into a contract with JMT Consulting Group to provide the subscription and implementation services for Sage Intacct finance software for a period of three (3) years, in an amount not to exceed \$209,988.00; all in accordance with the memorandum of Suzy Anzalone, Director of Finance, dated February 19, 2025.

Discussion: Fournier stated this is a good proposal.

Disposition: Resolved unanimous vote for; motion carried.

VIII. Licenses/Rights of Entry/Easements/Rights of Way:

A. Report:

- 1. New Hampshire Air National Guard – Right of Entry Exercise of Second of Three (3) Five-Year Options – Fiber Optic Conduit**
- 2. Unitil Corporation – Right of Entry – 16 Pease Boulevard - Geotechnical Review and Survey - Site Inspection**
- 3. IB ABEL, Inc. – Right of Entry - 119 Arboretum Drive – Laydown Area**

In accordance with the “Delegation to Executive Director: Consent, Approval and Execution of License Agreements,” PDA entered into the following Right-of-Entry:

1. Name: New Hampshire Air National Guard
License: Right of Entry
Location: Under Apron and Taxiway Alpha from ATCT to Communications Vault
Purpose: Fiber Optic Conduit
Term: Extension to January 31, 2030
2. Name: Unitil Corporation
License: Right of Entry
Location: 16 Pease Boulevard
Purpose: Geotechnical Review and survey / site inspection purposes
Term: November 21, 2024, through February 28, 2025
3. Name: IB ABEL, Inc.
License: Right of Entry
Location: 119 Arboretum Drive, Portsmouth International Airport at Pease
Purpose: Laydown Area to support Eversource utility projects
Term: Extension to March 28, 2025

IX. Leases:

A. Report:

1. **Sublease between 325 Corporate Drive II, LLC, Bottomline Technologies, Inc. and Albany International at 325 Corporate Drive**
2. **Sublease between 222 International, Limited Partnership and Rentokil North America, Inc. at 195 International Drive**
3. **Sublease between 230 Corporate Drive, LLC and Powerplay Holdings, Inc. dba AlphaGraphics Portsmouth at 230 Corporate Drive**
4. **Sublease between Two International Group, LLC and NBT Bank, National Association at 2 International Drive**
5. **Sublease between NH Avenue Retail Center, LLC and Troy Reprographics LLC at 14 Manchester Square (Suite #140)**
6. **Sublease between 119 International Drive, LLC and J&K Staffing Solutions, LLC dba Team Select Home Care at 15 Rye Street**
7. **Sublease between 222 International LP and Thrive Health Career Institute LLC at 195 New Hampshire Avenue**
8. **Sublease between 30 International Drive, LLC and CCI Prime Contractors, LLC at 30 International Drive**
9. **2-Way Communications Service, Inc. – 19 Durham Street - Exercise First of Two (2) Five-year Options**
10. **Sublease between NH Avenue Retail Center, LLC and MMP Capital LLC at 14 Manchester Square (Suite #180)**
11. **Sublease between Aviation Avenue Group LLC and Central Shared Services LLC at 100 New Hampshire Avenue**
12. **International Association of Privacy Professionals – 75 Rochester Avenue – Exercise First of Two (2) Five-Year Options**

In accordance with the “Delegation to Executive Director: Consent, Approval of Sub-Sublease Agreements” PDA approved the following lease option with:

1. Tenant: Albany International
 Space: 325 Corporate Drive
 Use: Administrative, executive, general office, recreational and wellness purposes.
 Term: Ten (10) years commencing January 1, 2025, through December 31, 2034.
2. Tenant: Rentokil North America, Inc.
 Space: 195 International Drive
 Use: General office and light industrial uses including operation of a pest control business and storage of regulated products.
 Term: Sixty (60) months with one (1) three-year option.
3. Tenant: Powerplay Holdings, Inc. dba AlphaGraphics Portsmouth
 Space: 230 Corporate Drive
 Use: Light manufacturing, general office purposes and legal and customary ancillary uses
 Term: Ten (10) years with two (2) five-year options, commencement anticipated January 1, 2025.
4. Tenant: NBT Bank, National Association
 Space: 2 International Drive
 Use: Office and related uses.
 Term: Two (2) years, commencement to be determined.
5. Tenant: Troy Reprographics LLC
 Space: 14 Manchester Square (Suite #140)
 Use: Office and related uses.
 Term: Two (2) years, commencing January 1, 2025, with one (1) two-year option to renew.
6. Tenant: J&K Staffing Solutions, LLC dba Team Select Home Care
 Space: 15 Rye Street (Suite 307)
 Use: General office and related uses.
 Term: Three (3) years and one month, commencing January 1, 2025, with two (2) three-year options to renew.
7. Tenant: Thrive Health Career Institute LLC
 Space: 195 New Hampshire Avenue
 Use: Administrative and classroom instruction/training.
 Term: Five (5) years, commencing January 1, 2025, with one (1) five-year option to renew.
8. Tenant: CCI Prime Contractors, LLC
 Space: 30 International Drive
 Use: Business office for a construction company and related uses.
 Term: Three (3) years and two (2) weeks, commencing January 15, 2025.

9. Tenant: 2-Way Communications Service, Inc.
 Space: 19 Durham Street
 Use: Commercial sales and service of radio communications equipment.
 Term: Exercise first of two (2) five-year options.
10. Tenant: MMP Capital LLC
 Space: 14 Manchester Square (Suite #180)
 Use: Office and related uses.
 Term: Three (3) years.
11. Tenant: Central Shared Services LLC
 Space: 100 New Hampshire Avenue
 Use: General Warehouse and Distribution and ancillary office use
 Term: Ten (10) years; Commencement Date to be confirmed
12. Tenant: International Association of Privacy Professionals
 Space: 75 Rochester Avenue
 Use: General business office uses and all customary accessory and incidental uses thereto in connection with Lessee's business activities.
 Term: Exercise first of two (2) five-year options.

The Delegation to Executive Director: Consent, Approval of Sub-sublease Agreements also requires the consent of one member of the PDA Board of Directors. In this instance, Director Fournier was consulted and granted his consent.

X. Contracts:

A. Report:

1. Pease International Tradeport – Republic Services (aka NRC East Environmental Services, Inc.) – Rental of Groundwater Treatment Trailer
2. Portsmouth International Airport at Pease - Daniel C. Fortnam – Air Development Consulting Service - Exercise of Final, One-year Option
3. Pease Golf Course - Christian Party Rental – Special Events Tent – Exercise First of Two (2) One-year options
4. Pease Golf Course – Clean Restroom Rentals, Inc. – Portable Toilets and Service – Exercise First of Two (2) One-year options
5. Portsmouth International Airport at Pease (“PSM”) – US Customs and Border Protection - Purchase, Installation and Service Agreement of USCBP Federal Inspection Station Camera
6. Pease International Tradeport - Fuss & O'Neill – Sample treated Groundwater Discharge
7. Pease Golf Course – SiteOne Landscape Supply – 5-Gang Magnum Harvester Ball Picker
8. Pease Golf Course – Sundance Signs – Refurbish Signage
9. Portsmouth International Airport at Pease – Higgins Corporation – One-year Service Agreement for Badge Printer
10. Portsmouth International Airport at Pease – Sunbelt Rentals – Mini Excavator Rental for Ice Removal on the Airfield
11. Vanasse Hangen Brustlin, Inc. – Scope and Fee - Pease International Tradeport – Five-Year Review of Spill Containment Procedures

In accordance with Article 3.9.1.1 of the PDA Bylaws, Brean reported the following:

1. Project Name: Republic Services (aka NRC East Environmental Services, Inc.)
Board Authority: Director Ferrini
Cost: \$8,682.50
Summary: PDA's On-Call Environmental Emergency Response contractor, rental of groundwater treatment trailer to dewater and treat groundwater from seventeen (17) electrical vaults on Corporate Drive.
2. Project Name: Daniel C. Fortnam
Board Authority: March 18, 2021
Summary: Exercise final one-year option for Air Development Consulting Service.
3. Project Name: Christian Party Rental, Inc.
Board Authority: March 11, 2024
Summary: Exercise the first of two (2) one-year options for Special Event Tent Rental.
4. Project Name: Clean Restroom Rentals, Inc.
Board Authority: April 18, 2024 – Reported to Board
Summary: Exercise the first of two (2) one-year options for Portable Toilets and Service.
5. Project Name: US Customs and Border Protection ("USCBP")
Board Authority: Delegation of Authority for Emergency Repairs with concurrence from Director Ferrini
Cost: \$12,308.42
Summary: Emergency Replacement, Installation and Maintenance of a FIS Security Camera at Portsmouth International Airport at Pease ("PSM") associated with the USCBP agreement.
6. Project Name: Fuss & O'Neill, PDA's on-call Environmental / Civil Engineering Contractor
Board Authority: Director Ferrini
Cost: \$5,200.00.
Summary: Wastewater sampling services pursuant to the Temporary Wastewater Permit issued by the City for the dewatering of seventeen (17) Eversource Utility Vaults.
7. Project Name: SiteOne Landscape Supply
Board Authority: Director Ferrini
Cost: \$7,665.00
Summary: Purchase of a 5-Gang Magnum Harvester Ball Picker. This new unit would replace the same model purchased in 2012; this piece of equipment is used 8 to 10 hours a day during the golfing season and is the only 5 gang ball picker that can be used in reverse, has a welded steel frame, and replacement parts are easily price checked with multiple product suppliers.

8. Project Name: Sundance Signs
Board Authority: Director Ferrini
Cost: \$3,820.00, plus 5% contingency
Summary: Remove, Refurbish and Reinstall Pease Golf Course and Grill 28 front entrance signage in an amount of \$3,820.00, plus, a 5% contingency fee to cover potential market price increase. Both signs were designed and installed by Sundance Sign during clubhouse construction in 2010; therefore, no additional costs will be incurred for design build and specifications.
9. Project Name: Higgins Corporation
Board Authority: Director Ferrini
Cost: 2,300.00
Summary: One-Year on-site service contract for “back-up” Badge Printer.
10. Project Name: Sunbelt Rentals
Board Authority: Director Ferrini
Cost: \$1,755.42
Summary: Rental of Mini Excavator for ice removal on the airfield.
11. Project Name: Vanasse Hangen Brustlin, Inc.
Board Authority: Director Ferrini
Cost: \$10,000.00
Summary: PDA’s on-call Transportation Engineering and Planning Consulting Services to provide a five-year review of spill containment procedures.

Brean highlighted item 11, which is an environmental initiative related to the FBO study with VHB to review the spill containment procedures on the airfield.

Duprey asked if the work being performed by VHB is associated with the determination of future FBOs; Brean affirmed.

XI. Signs:

A. Report:

1. **130 International Drive, LLC - 130 International Drive – Sign Revision for Trigger House, LLC**
2. **230 Corporate Drive, LLC – 230 Corporate Drive – Sign Revision for Powerplay Holdings, Inc. dba AlphaGraphics Portsmouth**

In accordance with the “Delegation to Building Inspector: Consent and Approval of Minor Revisions to Existing Signs” PDA reports as follows:

1. Entity: 130 International Drive LLC
Location: 130 International Drive
Summary: Modify the existing signage to reflect new tenant, Trigger House.
2. Entity: 230 Corporate Drive, LLC
Location: 230 Corporate Drive

Summary: Modify the existing signage to reflect new tenant, AlphaGraphics Portsmouth.

The Delegation to Building Inspector: Consent and Approval of Minor Revisions to Existing Signs also requires the consent of one member of the PDA Board of Directors. In this instance, Director Fournier was consulted regarding the sign changes.

Brean stated Trigger House is an entity which handles large scale marketing and large corporate events.

XII. Executive Director:

A. Reports:

1. Golf Course Operations:

Scott DeVito ("DeVito"), Pease Golf Course General Manager, spoke to the delivery of the cart fleet for the upcoming season. The driving range opens on the 17th, and anticipates opening some of the golf course, if the weather holds out over the next week to ten (10) days. Spoke to allowing 250 annual memberships, 225 adult memberships available with 216 filled, awaiting additional responses.

DeVito clarified the simulator revenue; since the extension with the concessionaire, the simulators are accounted differently as an explanation why the revenue appears lower.

2. Airport Operations:

a) Portsmouth International Airport at Pease (PSM)

b) Skyhaven Airport (DAW)

Brean stated the numbers for January with the two services, Allegiant Air and Breeze Airways, indicate approximately 8,500 enplanements. Further, revenue parking is strong with the parking lots being utilized, fuel flowage is strong primarily due to DOD / cargo technical stops / refueling missions (non-ANG) and an increase to commercial and aviation.

Brean spoke to a concern regarding the federal grant funding for aviation and a majority of grants received being from Airport Improvement Program ("AIP") funded from the Airway Trust Fund ("ATF"). He spoke to the various taxes imposed and deposited into the ATF, making up the AIP fund. Funds are triggered when entitlement (over 10,000 enplanements) is met as well as other discretionary programs.

c) Noise Line Report

(i) January and February

Brean indicated the two noise reports received in January being related to the earthquake; there were no noise reports for February.

Duprey spoke to PSM being busy, in the region; Brean affirmed by further stating PSM was named the sixth busiest Air Force Air Traffic Control Tower in the World. Brean spoke to the various military and non-military activity that utilize PSM and the local services available.

XIII. Division of Ports and Harbors:

A. Reports:

1. **Division of Ports and Harbors Facilities Report**
2. **Port Advisory Council Meeting Minutes of November 26, 2024**
3. **Piscataqua River Vessel Traffic Reports 2018 – 2024 & 2024 Detail**
4. **Bonnette Page and Stone Corp. - Portsmouth Fish Pier - Change Order No. 1 – Provision of Temporary Dock Power**
5. **Bonnette Page and Stone Corp. - Portsmouth Fish Pier – Change Order No. 2 - Bathroom Requirement per Fire Marshall**
6. **Market Street Marine Terminal - 555 Market Street - Right of Entry - American Cruise Lines, Inc.**
7. **Charter Boat Operations Right of Entry Renewals ***
 - **Hooked on Fish Charters, LLC – Rye Harbor Marine Facility**
 - **First Light Fisheries, LLC – Hampton Harbor Marine Facility**

Tom Maciel (“Maciel”), Operations Manager spoke to the report within the Board materials and further spoke to a busy month at the Port with various vessels utilizing the Market Street Terminal for a variety of purposes. Maciel spoke to metric tons of salt received, equating to six million 50-pound bags; salt trucks utilizing facility in January (1,500), February (4,600) – from January to present date a total of 6,116 trucks pulled salt for distribution to region. Maciel informed the Board of upcoming scheduled operations with SubCom to utilize DPH facility instead of going down to Baltimore; Brean stated that SubCom is a Newington based company which supplies approximately 50% of underground water cables around the world.

Conard asked if DPH is seeing more business due to constraints due to the bridge collapse at the Port of Baltimore; Maciel indicated there has been more activity than the past couple of years, but DPH is constrained due to a variety of limitations (e.g. Memorial Bridge).

Maciel updated the Board regarding the Functional Replacement was approved by the Governor and Executive Counsel in 2023 and is 100% funded by the Federal Highway to restore full operations at the DPH facility impacted by the Sarah Mildred Long Bridge replacement.

Maciel spoke of the Market Street Terminal being a deep-water year-round port in region for offloading which is accessible to I95; future ops with UNH for a maintenance and tidal turbine improvements located on the Memorial Bridge; Portsmouth Fish Pier demolition; kick off of Rye Harbor study; installation of floats at Hampton and Rye Harbor; and Commercial Fishing Day at the DMV.

Levesque inquired about mooring permits and how they will be handled where DMV is late with the two-sticker disbursement; Maciel indicated DPH has posted effective due dates in newspapers and being is being proactive with deadlines.

B. DPH Consent Agenda Approvals:

1. **Hampton Harbor Marine Facility - Right of Entry – Liberty Services, LLC – Vessel Hauling / Launching**
2. **Moores Crane Rental Corp. - Division of Ports and Harbors Marine Facilities - Crane Services**

Director Levesque moved the motion and Director Conard seconded that the Pease Development Authority Board of Directors hereby moves that item numbers 1-2 from the Division of Ports and Harbors consent agenda list below be approved as a single consent agenda item, and that the proposed motions included for each be incorporated into such approval as the operative motion for each item.

1. Hampton Harbor Marine Facility - Right of Entry – Liberty Services, LLC – Vessel Hauling / Launching
2. Moores Crane Rental Corp. - Division of Ports and Harbors Marine Facilities - Crane Services

Discussion: None. Disposition: Resolved unanimous vote for; motion carried.

C. DPH Approvals:

1. Final Adoption of Fees, Parking, Vessel Launch and Vessel Storage

Director Ferrini moved the motion and Director Conard seconded that the Pease Development Authority (PDA) Board of Directors hereby adopts the “Schedule of Fees for Parking, Launching and Vessel Storage” for the Hampton and Rye Harbor Marine Facilities, to be effective May 1, 2025, and authorizes the Operations Manager of the Division of Ports and Harbors to submit the Fee Schedule to the Office of Legislative Services, Administrative Rules for publishing pursuant to RSA 541-A; all in accordance with the memorandum of Tom Maciel, Operations Manager at the Division of Ports and Harbors, dated February 18, 2025, and the draft “Adopted Schedule of Fees for Parking, Launching and Vessel Storage”.

Discussion: Duprey spoke about short-term parking referenced by Hampton ROE holder during public comment, as well as retail food operations at Rye; favor of short-term parking fee mechanism. Duprey made the recommendation to table this so staff can provide clarity on short-term parking.

Ferrini supported a motion to table. Further stated the City of Portsmouth’s parking management accomplishes 15-minute parking through signage/labeling.

Duprey spoke to boat storage fees and wondered if proposed fees are commercially prudent; Brean indicated boat storage fee was increased a few years ago. Duprey suggested consideration of amenities in correlation to the fees between public and private storage. The Board does not accept or approve the minutes from the Advisory Committee, but the November minutes reference accommodating boat storage at the Tradeport in order to create more parking. Brean spoke to the policy of the FAA, if boats stored on the Tradeport, the requirement would be to charge fair market value charge and the funds would remain revenue for Airport/Tradeport; in theory DPH could lose a revenue stream.

Brenda Therrien (“Therrien”), Administrative Assistant for DPH, spoke to the need to send letters regarding vessel storage and if vessel storage is not passed today may not be able to implement in a month.

Duprey inquired if the staff responds regarding the short-term parking would there be a reason the public notice requirement could not be met; Therrien inquired into the ability to segregate out the vessel storage. Duprey inquired what the last rate increase was; Therrien believed the last increase was \$4. Brean stated the current proposed summer increase is from \$36 to \$40.

Ferrini indicated a 40-foot vessel would be \$1,200; Therrien indicated that would be winter rate, summer is less. Brean corrected to indicate summer would increase to \$40/ft. and winter increase to \$20/ft.

Duprey stated instead of tabling, the Board would **amend to the adoption of vessel storage and launching**; Ferrini **accepted** the amendment and Conard **seconded**.

Blenkinsop provided clarification to indicate on the attached schedule the Board would move the bottom four items related to vessel storage forward and everything above those related to parking would be tabled at this time for further study.

Fournier spoke to clearer delineation (vessels versus parking).

Duprey stated the motion has been amended to adopt the schedule fees for launching and vessel storage that show up on the last four lines of the schedule the Board is approving.

Disposition: Resolved by **unanimous** vote related only to approval of Launch and Vessel Storage (shown on the last four lines of the schedule); motion **carried**.

Director Levesque **moved** the **motion** and Director Semprini **seconded** to **table Final Adoption of Fees, as it relates to parking**.

Discussion: Duprey spoke to the request to have staff review the parking fees for the April meeting to address short-term parking at the DPH harbor facilities.

Disposition: Resolved by **unanimous** vote related only to tabling of Parking for, motion **carried**.

2. Initial Proposal-Readoption, CHAPTER Pda 700 SLIP PERMITS; STATE-OWNED RESTRICTED PIERS

Director Conard **moved** the **motion** and Director Parker **seconded** that **the Pease Development Authority Board of Directors hereby approves the Initial Proposed Administrative Rules Pda 700, Slip Permits; State-Owned Restricted Piers, attached hereto, as presented and annotated pursuant to RSA 541-A:6.**

Further, the Board authorizes the Executive Director and the Division of Ports and Harbors to take any necessary or recommended action in furtherance of this matter; all in accordance with the memorandum of Tom Maciel, Operations Manager of the Division of Ports and Harbors, dated February 20, 2025.

Discussion: None. **Disposition**: Resolved **unanimous** vote for; motion **carried**.

3. Acting Division Director - Administrative Rules, Pda 514 - Limited Purpose (Mooring Appeals)

Director Semprini **moved** the **motion** and Director Levesque **seconded** that **the Pease Development Authority Board of Directors hereby appoints the Pease Development Authority Executive Director, ex officio, to serve as the Acting Director of the Division of Ports and Harbors, for the limited purpose of reviewing and taking timely action on any petitions for reconsideration under N.H. Code of Administrative Rules Pda 514, and with such limited appointment being effective only until April 15, 2025; all in accordance with the memorandum from Josh Wyatt, Deputy General Counsel, dated March 5, 2025.**

Discussion: Duprey spoke to the statutory requirement to have appeals heard within a required time period; Blenkinsop affirmed by stating it relates to mooring permits.

Disposition: Resolved unanimous vote for; motion carried.

XIV. New Business:

A. Grant Applications Filed in January, February and March:

1. Portsmouth International Airport at Pease - Design of Taxiway Alpha South
2. Portsmouth International Airport at Pease - Airport Layout Plan with Narrative

Brean spoke of the need to meet funding requirements for runways and taxiways.

XV. Special Event:

No items to report.

Brean spoke to regular meetings with the Air National Guard regarding its Air Show scheduled for the first week of September to allow for a safe and secure event.

XVI. Upcoming Meetings:

Audit Committee	April 14, 2025 @ 8:30 a.m.
Board of Directors	April 15, 2025 @ 8:30 a.m.
Noise Compatibility Committee	April 15, 2025 @ 6:30 p.m.
All Meetings begin at 8:30 a.m. unless otherwise posted.	

XVII. Directors' Comments:

A. Report:

1. Inquiry received from NH State Representative Tom Mannion of February 3, 2025, with accompanying response provided by Executive Director Brean

Brean spoke briefly to the inquiry received and response provided.

XVIII. Press Questions:

None.

XIX. Non-Public Session:

1. NH RSA 91-A:3, II (a); and
2. NH RSA 91-3, II (l)

Director Parker moved the motion and Director Conard seconded that the Pease Development Authority Board of Directors will enter non-public session pursuant to NH RSA 91-A:3 for the purpose of discussing:

1. The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted; [NH RSA 91-A:3, II (a)]; and

2. Consideration of Legal Advice provided by Legal Counsel [NH RSA 91-A:3, II (I).

Discussion: None. **Disposition:** Resolved unanimous roll call (7-0) vote for; motion carried.

The Board went into Non-Public Session at 9:53 a.m. and came out of Non-Public Session at 10:36 a.m.

XX. Confidentiality:

Director Fournier moved the motion and Director Semprini seconded that Resolved, pursuant to NH RSA 91-A:3, the Pease Development Authority Board of Directors hereby determines that the divulgence of information discussed and decisions reached in the non-public session of its March 11, 2025, meeting regarding the consideration of legal advice provided by legal counsel and consideration of the dismissal, promotion, or compensation of any public employee or the disciplining of such employee or the investigation of any charges against him/her would, if disclosed publicly, render the proposed action ineffective and likely would affect adversely the reputation of any person other than a member of the public body itself, and further agrees that the minutes of said meeting be held confidential until, in the opinion of a majority of the Board of Directors, the aforesaid circumstances no longer apply.


Discussion: None. **Disposition:** Resolved unanimous roll call (7-0) vote for; motion carried.

XXI. Adjournment:


Director Levesque moved the motion and Director Semprini seconded to adjourn the Board meeting. Meeting adjourned at 10:36 a.m.

Discussion: None. **Disposition:** Resolved unanimous vote; motion carried.

Respectfully submitted,



Paul E. Brean
Executive Director

- * Related Materials Attached
- ** Related Materials Previously Sent
- *** Related Materials will be provided under separate cover
- + Materials to be distributed at Board Meeting
-  Confidential Materials