

PEASE DEVELOPMENT AUTHORITY  
DIVISION OF PORTS AND HARBORS

**RIGHT OF ENTRY**

Pease Development Authority, Division of Ports and Harbors ("PDA-DPH"), 55 International Drive, Portsmouth, NH 03801, under authority set forth in NH RSA 12-G, grants a Right of Entry to NAS Fuels, LLC dba Atlantic Fuels ("NAS"), a New Hampshire limited liability company, with a mailing address of PO Box 792, Rye, NH 03870 and physical address of 79 Depot Rd., Epping, NH, 03042 to use property of the State of New Hampshire ("Premises") pursuant to the terms of this Right of Entry ("ROE") and for the following purposes and for no other uses unless expressly authorized:

**PREMISES:** Hampton Marina, Hampton, NH / Rye Marina, Rye, NH /  
Market Street Port Terminal, Portsmouth, NH / & Portsmouth  
Fish Pier, Portsmouth, NH

**PURPOSE OF ROE:** Sale of Fuel to Party Boat Operators, Commercial Fishermen  
& Commercial Vessels

**PERIOD OF USE:** January 1, 2023 through December 31, 2026

**COMMISSION FEE:** As Set Forth in Section 4

This ROE is given subject to the following conditions:

1. The term of this ROE shall be from January 1, 2023 through December 31, 2026.
2. Subject to the terms and conditions of this ROE, NAS is granted a non-exclusive right to sell fuel to:
  - A. Party Boat Operators at Hampton Marina and Rye Marina;
  - B. Commercial Fishermen at Portsmouth Fish Pier, Hampton Marina, and Rye Marina; and
  - C. Commercial Vessels at the Market Street Port Terminal.
3. NAS shall only provide deliveries of diesel fuel (gasoline prohibited) at Hampton Marina and Rye Marina between the hours of 5:30 AM and 7:30 AM, or after 6:00 PM, except in an emergency. The Market St. terminal has regular hours, Monday – Friday, from 6:00 AM to 4:00 PM, deliveries outside of these hours must be approved by PDA-DPH.

4. For the first year, fuel sold to Party Boat Operators and Commercial Fishermen, NAS agrees to pay PDA-DPH on a monthly basis, a commission of \$0.10 per gallon on each gallon of fuel sold. For fuel sold to Commercial Vessels (excluding Commercial Fishermen and Party Boat Operators) at the Market Street Port Terminal, NAS agrees to pay \$.01 per gallon for the first 50,000 gallons sold per vessel and \$.005 (1/2 cent) per gallon for any amount of fuel sold in excess of 50,000 gallons to each respective vessel. In instances where an order for an individual vessel exceeds the 50,000 gallon amount the \$.005 (1/2 cent) rate shall to be applicable to the first 50,000 gallons of fuel sold.

Should a commercial vessel with tank capacity of less than 10,500 gallon fuel capacity, and with an approved variance from the Office of the State Fire Marshal require refueling at the Market Street Terminal, NAS will first request permission from the Division and justify the need to refuel at the Market Street Terminal. Once receiving permission from the Director or his designee, the standard rate of 0.10 per gallon will apply.

PDA-DPH reserves the right to increase fees and rates in connection with this ROE on an annual basis. Notification of fee and rate increases will be provided on or before October 1 (first) in any given year and become effective on January 1 (first) of the following year.

5. Payments shall be made within 10 days following the end of each month. Payments shall be accompanied by a report of the total gallons of fuel sold, by vessel and location, for each applicable time period and shall be made payable to "**Pease Development Authority, Ports and Harbors Fund**" and forwarded to PDA-DPH, 555 Market St., Portsmouth, NH 03801. PDA-DPH reserves the right to audit or inspect NAS's financial records to ensure compliance with the obligation to pay the fuel fee commission.
6. This ROE does not contain an option to renew. In no event shall the term of this ROE extend beyond December 31, 2026. Requests to extend the ROE past December of 2026 shall be requested in writing on or before October 1, 2026.
7. NAS shall indemnify, defend and hold the State of New Hampshire and PDA-DPH harmless 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 any building structure or improvement thereon for which NAS has taken possession of hereunder;
  - B. from any breach or default on the part of NAS to be performed pursuant to the terms of this ROE, or from any act or omission of NAS, 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 areas (including ramp and parking areas) arising out of or incidental to the use, management or control of the area(s) by NAS and activities which are the subject of this ROE.

8. On or before the effective date of this ROE, NAS shall provide PDA-DPH with a certificate of insurance evidencing the existence of a Commercial General Liability insurance policy protecting the parties hereto and naming the State of New Hampshire and PDA-DPH as additional insureds from loss or damage because of the liability that may be incurred by the State of New Hampshire, PDA-DPH and NAS in connection with uses authorized under this ROE, when such liability is imposed on account of injury or death of a person or persons or property damage. Said policy 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 \$2,000,000.00 per occurrence, and automobile liability insurance in the amount of \$1,000,000.00. NAS shall also provide Pollution Liability coverage in an amount not less than \$1,000,000.00 per occurrence to cover losses arising from fuel spills at facilities where fuel is dispensed under the terms of this ROE. The Pollution Liability coverage is in addition to the \$2,000,000.00 per occurrence in required Commercial General Liability coverage. Insurance provided pursuant to this ROE shall be primary and non-contributing with respect to any coverages, self-insured, or otherwise carried by PDA-DPH, contain a waiver of subrogation and may not be canceled without providing PDA-DPH with at least thirty (30) days advance written notice by registered mail.

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 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 ROE to the extent such are permitted by New Hampshire NH RSA Ch. 491:8, as the same may be amended.

9. NAS shall obtain advance approval for all signs and advertisements posted on the Premises. In all cases the decision of PDA-DPH shall be final.
10. NAS may cancel this ROE by giving PDA-DPH thirty (30) days' notice in writing.
11. This ROE may be canceled by PDA-DPH in the event of the failure of NAS to perform, keep, and observe any of the conditions of the ROE and the failure of NAS to correct the default or breach within the time specified by PDA-DPH by giving NAS thirty (30) days written notice of cancellation. This ROE may be canceled immediately by PDA-DPH in the event NAS fails to provide proof of insurance coverage or engages in any activity which is deemed to compromise public safety and health.
12. In the performance of this agreement, NAS is, in all respects, an independent contractor, and is neither an agent nor employee of the State of New Hampshire or PDA-DPH. Neither NAS nor any of its officers, employees, agents, or members shall have the authority to bind the State of New Hampshire or PDA-DPH nor is any ROE holder entitled to any of the benefits, Worker's Compensation or emoluments provided by the State of New Hampshire or PDA-DPH to its employees.



In connection with the performance of this ROE, NAS agrees to comply with all statutes, laws, regulations, rules and orders of federal, state, county or municipal authorities which shall impose any obligation or duty on NAS for delivery of diesel fuel over water directly to a vessel from a tank truck including, but not limited to, the following:

- 33 CFR and 46 CFR for vessels whose fuel capacity is 10,500 gallons or more;
  - Office of the State of NH Fire Marshall per NFPA 30 for vessels whose capacity is less than 10,500 gallons;
  - Per PDA rules for all vessels desiring to receive fuel deliveries from Division properties.
13. NAS shall obtain all necessary permits and provide copies of them to PDA-DPH at the time of execution of this document including, but not limited to, and subject to the following:
- NAS must provide proof of compliance with applicable sections of 33 CFR and 46 CFR.
  - Diesel fuel will only be delivered to vessels (less than 10,500 gallon capacity) that have a contractual agreement with PDA-DPH to receive deliveries including a variance issued by the Office of the State of NH Fire Marshall in accordance with Bulletin #2015-07 as may be amended from time to time.
  - Diesel fuel (gasoline prohibited) will only be delivered to commercial vessels (greater than 10,500 gallon capacity) at the Market Street Marine Terminal with prior permission of PDA-DPH.
14. NAS is responsible for providing all necessary and required safety equipment and training as may be required and appropriate to the uses allowed under this ROE.
15. This ROE may not be assigned or transferred without the express written approval of PDA-DPH.

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**PEASE DEVELOPMENT AUTHORITY**  
**Division of Ports and Harbors**

Date: 12/5/2022

*Rachina A. O'Neil*  
Witness

*Paul E. Brean*  
Paul E. Brean, Executive Director

**NAS FUELS, LLC dba Atlantic Fuels**

Date: 12/05/2022

*Michael MacPhail*  
Signature

Michael MacPhail, General Manager  
Printed Name and Title:

*Cindy Dumond*  
Witness Signature

Cindy Dumond  
Witness Printed Name