

CONCESSION CONTRACT

This concession contract (“the contract”), effective July 01, 2020, is between Pease Development Authority, Division of Ports and Harbors (PDA-DPH) 555 Market St., Portsmouth, NH 03801 and **Granite State Whale Watch, Inc. dba Rye Harborside** (“concessionaire”), PO Box 768, Rye, NH 03871.

1. RIGHT TO SELL

PDA-DPH grants to the concessionaire the right and privilege to sell items normally associated with a snackbar; Rye Harbor Marine Facility, Rye, NH (the “Premises”) in accordance with the terms contained herein. Concessionaire must comply with all state and local laws governing the sale and distribution of alcoholic beverages, tobacco and 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. CONTRACT TERM

The term of this contract shall be effective as of July 01, 2020 and continue through June 30, 2023 except as it may be extended or terminated as provided herein.

3. RENT

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 April 1st of any given year during the term of the ROE and will become part of this ROE and effective on July 1st of that year.

First year, July 01, 2020 through June 30, 2021 - \$1,000.00

4. CANCELLATION BY CONCESSIONAIRE

This contract 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 25 shall survive termination.

5. CANCELLATION BY PDA-DPH

This contract 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 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 25 shall survive termination.

6. RIGHT TO DECIDE QUESTIONS

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

7. ASSIGNMENT OR SUBCONTRACT

This contract 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 contract agreement to operate a concession at the Premises.

8. BUILDING AND LOCATION

The premises are located adjacent to the waterfront bulkhead as shown in the attached plan (Exhibit A). Improvements or alterations to the concessionaire's building are subject to the approval of PDA-DPH. The concessionaire shall maintain the exterior and interior of its 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.

9. CASUALTY ADJUSTMENT

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 operation shall be suspended or abated until and if said Premises, building, or any part thereof shall have been placed in proper condition for use by the concessionaire. PDA-DPH may terminate this contract in the event the concessionaire fails to repair or replace the Premises or building within ninety (90) days of a fire or casualty. In the event of such termination, the concessionaire shall remain responsible for the costs of any repair or removal undertaken by PDA-DPH.

10. CONDITIONS AND SURRENDER OF PROPERTY

The buildings, bait and tackle shop, shelters, rooms, built-in equipment and locations of all parts thereof which are the property of the concessionaire shall remain the property of the concessionaire and, upon termination of this contract by lapse of time or otherwise, the concessionaire shall remove same from the premises. Upon the termination of this contract, the concessionaire may offer for sale to PDA-DPH, at fair market value, any and all buildings and equipment owned by the concessionaire.

11. 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 inspection said premises or for any other purpose as may be required by this contract. Except in the event of an emergency, PDA-DPH agrees that such access will not unduly affect the operations of the concessionaire's business.

12. UTILITIES

All utilities to serve the Premises and the building thereon shall be the sole responsibility of concessionaire.

13. SANITATION

The concessionaire shall be responsible for routine cleaning of all areas of the premises and equipment where food or merchandise is stored, prepared or sold. Concessionaire shall be responsible for grounds pickup immediately adjacent to concession locations.

Cleaning within this proposal shall mean 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 agency having jurisdiction over such matters. The concessionaire shall be responsible for picking up garbage and rubbish and depositing same at a location designated by PDA-DPH.

14. 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.

15. ITEMS TO BE SOLD

In all instances, items sold must meet the approval of PDA-DPH.

16. MERCHANDISE

Merchandise offered should be of good quality. Questions on quality will be referred to PDA-DPH whose judgment in all cases shall be final.

17. RECYCLABLE AND BIODEGRADABLE SERVING MATERIALS

The concessionaire shall utilize serving supplies produced from recyclable or biodegradable materials. Concessionaire shall work out a mutually agreeable solid waste reduction program for solid waste generated by concessionaire's operations.

18. 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 by the concessionaire.

19. ACCOUNTING METHODS AND PAYMENTS

Recording of Sales – All gross income received by the operator shall be recorded by cash registers. Register tapes shall be available to PDA-DPH or its agents for audit and inspection purposes. Accountability of meals taxes shall be dealt with or resolved as between the concessionaire and the State Department of Revenue Administration.

Accounting Records – The concessionaire shall maintain such permanent books of accounts and records, including inventories, sufficient to show specifically the items of total dollar receipts and expense, receipts and disbursements and other information as will correctly reflect the financial condition and results of operations. The books and records required shall be available at all times for inspection by PDA-DPH and such other parties as may be authorized under state law to examine books and records of any department of the State of New Hampshire.

Audits – PDA-DPH shall have authority to audit the concessionaire's books and records in order to protect the public interest.

Accounting Reports – If requested the concessionaire will at least annually submit to PDA-DPH an audited Statement of Profit and Loss for the individual park location no later than sixty (60) days after the end of the operating season.

20. SIGNS

Concessionaire 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.

21. PERSONNEL

Concessionaire shall at all times maintain a staff of employees deemed adequate by PDA-DPH 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.

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

No one other than employees of the concessionaire will be allowed behind counters in the service and sales areas without the approval of both the concessionaires and PDA-DPH.

22. HOURS OF OPERATION

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

23. STATUTES, ORDINANCES AND REGULATIONS

In connection with the performance of this contract, 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.

24. 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.

25. PERFORMANCE & INDEMNIFICATION

The concessionaire agrees to perform and faithfully observe and comply with the conditions, regulations and provisions prescribed herein and further to indemnify, defend (with counsel acceptable to the State of New Hampshire and PDA-DPH) 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 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 ROE 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 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.

26. RELATION TO STATE

In the performance of this contract, 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.

27. INSURANCE

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

28. SOVEREIGN IMMUNITY

No provisions of this contract shall be deemed to constitute or effect a waiver of this sovereign immunity of the State of New Hampshire and no provision of this contract 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.

29. 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.

30. PROVISIONS FOR PROPERTY TAX

The concessionaire agrees to hold the State of New Hampshire and PDA-DPH harmless with respect to taxes levied against the premises subject to this contract as a consequence of the application of RSA 72:23 I. The concessionaire agrees to pay, in addition to other payments, all properly assessed real and personal property taxes against the premises subject to this contract in accordance with the provisions of RSA 72:23 I. In the event the concessionaire shares a larger parcel of land with lessees or other

cessionaires, it shall be obligated to pay only its pro rate share of any such taxes. Failure of the concessionaire to pay its duly assessed personal and real estate taxes when due shall be cause to terminate said contract by PDA-DPH. The concessionaire shall, in addition, reimburse PDA-DPH for any taxes paid by it pursuant to RSA 72:23 I as a result of the concessionaire's failure to pay said taxes.

31. AMENDMENT

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

32. 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.

33. RENEWAL

Subject to concessionaire's not being in default hereunder, this contract may be renewed upon such terms and conditions as may be agreed to by the parties hereto.

34. CONDITIONAL OBLIGATION OF THE STATE

Notwithstanding, anything to the contrary contained in this contract, 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 contract by giving the concessionaire fifteen (15) days advance written notice of such termination and upon the expiration of said fifteen (15) days, this contract shall terminate.

35. 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.

36. ENTIRE AGREEMENT

This contract, 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.

37. PARKING PASSES

PDA-DPH will issue seasonal parking passes to employees of the concessionaire. Parking passes may only be used in connection with activities associated with the operation and management of the

Granite State Whale Watch, Inc. dba Rye Harborside

ROE

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business. The concessionaire employees must park their vehicles in the general parking area at Hampton Harbor Marine Facility.

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Granite State Whale Watch, Inc. dba Rye Harborside
ROE
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PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Date: 7/7/2020

Bartine A. O'Neil
Witness

Paul E. Brean
David R. Mullen, Executive Director, PDA
Paul E. Brean

Granite State Whale Watch, Inc. dba Rye Harborside

Date: 7-2-20

Leo Austin
Witness Signature

LEO AUSTIN
Witness Printed Name

Peter Reynolds
Authorized Signature
PETER REYNOLDS Pres
Printed Name/Title

EXHIBIT A

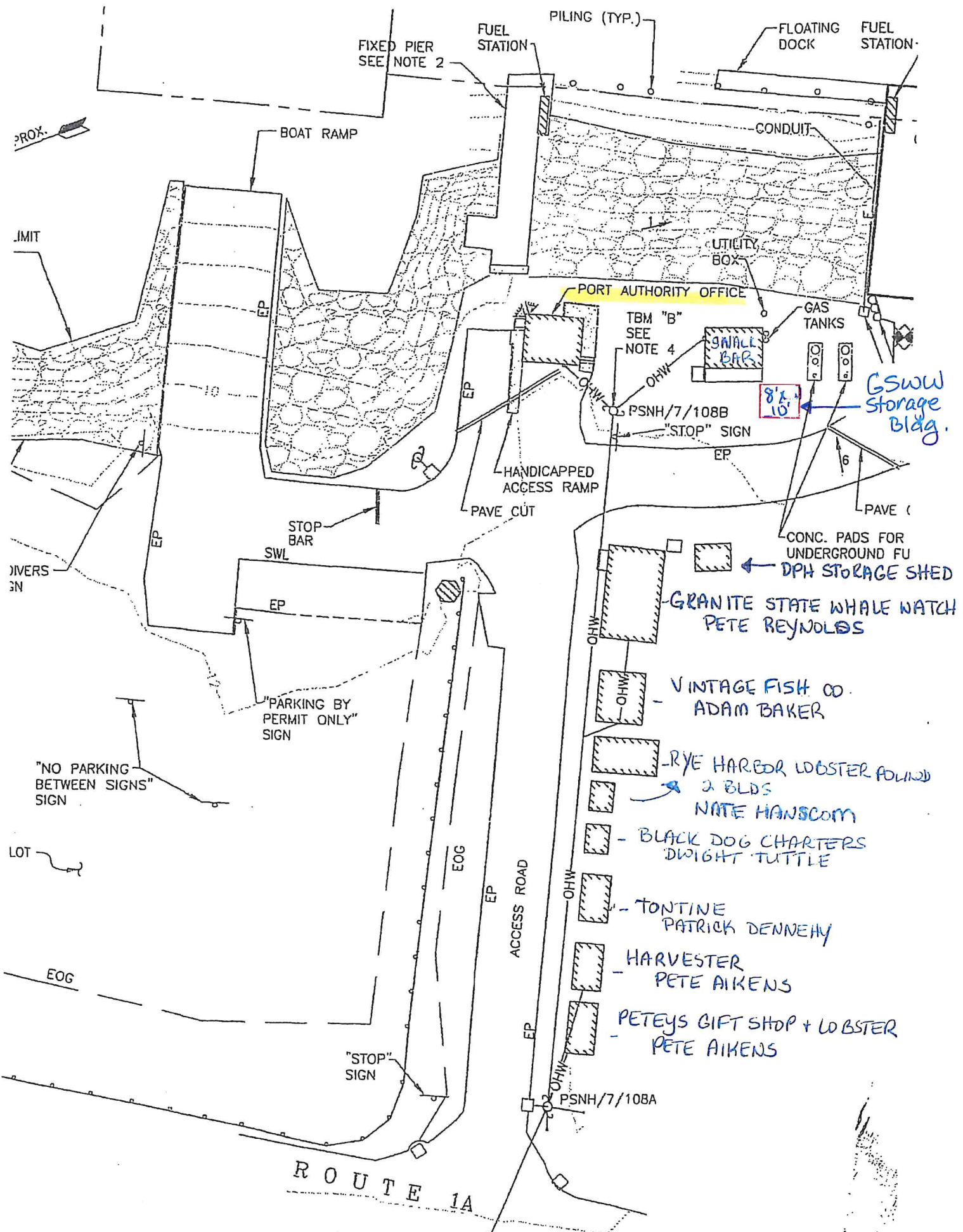
MINIMUM INSURANCE REQUIREMENTS FOR CONCESSIONAIRES OPERATING ON THE PROPERTY OF THE STATE OF NH, PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS (PDA-DPH)

All Charter 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. Concessionaire shall ensure renewal COI’s 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. **Protection and Indemnity:** 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.
3. **Dockside liability endorsement:** Covering piers, gangways, and docks
4. **Automobile Liability:** One (1) million dollars automobile liability coverage.
5. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
6. **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
7. **Certificate Holder:**
Pease Development Authority, Division of Ports of Harbors
555 Market St.
Portsmouth, NH 03801
8. **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.
9. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
10. **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.
11. **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.



FIXED PIER
SEE NOTE 2

FUEL STATION

PIILING (TYP.)

FLOATING DOCK

FUEL STATION

PROX.

BOAT RAMP

CONDUIT

LIMIT

UTILITY BOX

PORT AUTHORITY OFFICE

TBM "B"
SEE NOTE 4

SMALL BAR

GAS TANKS

GSWW Storage Bldg.

PSNH/7/108B

"STOP" SIGN

HANDICAPPED ACCESS RAMP

PAVE CUT

PAVE (

STOP BAR

SWL

CONC. PADS FOR UNDERGROUND FU

DPH STORAGE SHED

GRANITE STATE WHALE WATCH
PETE REYNOLDS

VINTAGE FISH CO.
ADAM BAKER

RYE HARBOR LOBSTER FARM
2 BLDG

NATE HANSCOM

BLACK DOG CHARTERS
DWIGHT TUTTLE

TONTINE
PATRICK DENNEHY

HARVESTER
PETE AIKENS

PETEYS GIFT SHOP + LOBSTER
PETE AIKENS

DIVERS SIGN

"PARKING BY PERMIT ONLY" SIGN

"NO PARKING BETWEEN SIGNS" SIGN

LOT

EOG

ACCESS ROAD

OHV

EOG

"STOP" SIGN

PSNH/7/108A

ROUTE 1A