

## MOTION

Director Ferrini:

The Pease Development Authority Board of Directors authorizes the Executive Director and the Division of Ports and Harbors Director, in accordance with their respective powers and duties, to finalize and execute: 1.) a Right of Entry; and 2.) a Concession Agreement, with Granite State Whale Watch Inc., dba Rye Harborside for the Rye Harbor Marine Facility; all in accordance with the terms and conditions set forth in the memorandum of Geno J. Marconi, Director of the Division of Ports and Harbors, dated May 11, 2023, attached hereto.



**PEASE**

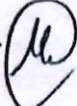
INTERNATIONAL

PORTS AND HARBORS

555 Market Street, Suite 1 Portsmouth, NH 03801

DATE: May 11, 2023

TO: Pease Development Authority ("PDA"), Board of Directors

FROM: Geno Marconi, Division Director 

RE: Concession Agreement & Right of Entry, Rye Harbor Marine Facility

The Division of Ports and Harbors (the "Division") received a request for a Right of Entry ("ROE") and Concession Agreement from Granite State Whale Watch dba Rye Harborside ("Rye Harborside") requesting permission to maintain a building onsite to support a food concession at the Rye Harbor Marine Facility.

The Division reviewed the request and recommends the PDA Board of Directors approve the ROE and Concession Agreement for Rye Harborside in accordance with the attached respective agreements.

○○○○ TAKING YOU THERE

ph: 603-436-8500

fax: 603-436-2780

www.peasedev.org

**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 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 15<sup>th</sup> 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 15<sup>th</sup>. 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 15<sup>th</sup> 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**

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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.

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
**Granite State Whale Watch Inc.,  
dba Rye Harborside**

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Witness Printed Name

\_\_\_\_\_  
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**, as shown in the attached 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, 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
- RENTAL 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.
3. The term of this ROE shall be as set forth above as Period of Use. Requests for renewal shall be

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

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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 1<sup>st</sup> 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 1<sup>st</sup> of any given year during the term

of the ROE and will become part of this ROE and effective on April 1<sup>st</sup> 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

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

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**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**

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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](http://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.



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

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

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

**Granite State Whale Watch dba Rye Harborside**

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Witness Printed Name

\_\_\_\_\_  
Printed Name/Title

EXHIBIT A



EXHIBIT A - RYE HARBOR RIGHT OF ENTRY

DESIGNED BY: MCR    DATE: 05/05/2023    SCALE: N.T.S.

 **PEASE DEVELOPMENT AUTHORITY**

55 INTERNATIONAL DRIVE, PORTSMOUTH, NH 03801

R:\Projects\Land Use\ports rye harbor\pease harborside exhibit a 5-5-2023

**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. **Dockside liability endorsement:** Covering piers, gangways, and docks
3. **Automobile Liability:** \$1,000,000.00 automobile liability coverage.
4. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
5. **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
6. **Certificate Holder:**  
Pease Development Authority, Division of Ports of Harbors  
555 Market St.  
Portsmouth, NH 03801
7. **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.
8. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
9. **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.
10. **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.