

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
FIVE POST OFFICE SQUARE  
SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912**

**SENT VIA U.S. MAIL AND ELECTRONIC MAIL**

April 21, 2011

Honorable Mayor Scott W. Lang  
City of New Bedford  
133 Williams Street  
New Bedford, MA 02740

**RE: New Bedford Harbor Superfund Site**  
Termination of License Agreement Between EPA and the City of New Bedford  
for Approximately 5,000 Square Feet at the End of Sawyer Street

Dear Mayor Lang:

The purpose of this letter is to notify you that pursuant to Paragraph No. 7, EPA is hereby terminating the License Agreement (the License) between the City of New Bedford and the EPA executed on December 27, 2005. This License provides for the exclusive use and access of approximately 5,000 square feet of land located at the easterly end of Sawyer Street, including land between high tide and low tide (as shown on Exhibit A of enclosed License Agreement) until May 15, 2016 or upon termination by either party in accordance with Paragraph No. 7. In addition, pursuant to the above-noted paragraph, neither a daily usage fee nor consideration was paid for this License by EPA; therefore, there is no debt due to the United States for the remaining years on the License due to this early termination.

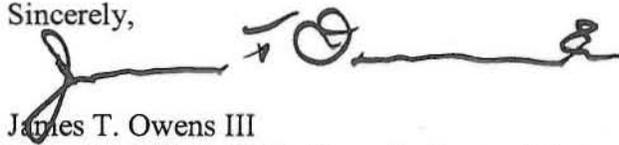
You may also be aware that, as part of the remedial action for the Harbor Site, EPA constructed a new CSO diversion box beneath the Licensed Area. That box and a portion of the new pipeline are depicted on Exhibit A.

The License stipulates that at the termination of the License Agreement, EPA shall return the Licensed Area to the same condition existing at the Licensed Area when the License became effective. However, because the City asked for and was granted permission by EPA to access the Licensed Area for cleanup of the area, EPA is returning the Licensed Area in its current condition.<sup>1</sup>

---

<sup>1</sup> Enclosed email from Elaine Stanley to Ronald Labelle dated September 21, 2010 and sketch of proposed work prepared by the City and provided to EPA

Sincerely,

A handwritten signature in black ink, appearing to read "James T. Owens III". The signature is written in a cursive style with a large initial "J" and a distinct "O".

James T. Owens III  
Director, Office of Site Remediation and Restoration

Enclosures

cc: Elaine Stanley, Remedial Project Manager, EPA  
Kimberly White, Remedial Project Manager, EPA (email only)  
David Peterson, Senior Enforcement Counsel, EPA (email only)  
Cynthia Catri, Senior Enforcement Counsel, EPA (email only)  
Irene Schall, City Solicitor (email only)

## LICENSE AGREEMENT

This License Agreement ("Agreement") by and between the City of New Bedford, Massachusetts ("the City") and the United States of America, acting through the Environmental Protection Agency ("EPA") ("the Party" or "the Parties"), is executed on this 27<sup>th</sup> day of December, 2005.

### RECITALS

WHEREAS, the City is authorized to enter into this Agreement for the public benefit, pursuant to the powers granted to a Plan B Form of government as set forth in the laws of the Commonwealth of Massachusetts; and

WHEREAS, EPA is authorized by Section 104(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9604 (a), and the National Contingency Plan, 40 C.F.R. Part 300, to conduct response actions deemed necessary to protect the public health or welfare or the environment from a release or substantial threat of release into the environment of any hazardous substance, pollutant or contaminant; and

WHEREAS, the New Bedford Harbor Superfund Site ("the Site") has been designated on the CERCLA National Priorities List, 40 C.F.R. Part 300, App. B (1988), pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B) and encompasses the Acushnet River estuary south through the commercial harbor of New Bedford and into 17,000 adjacent acres of Buzzards Bay, within the municipalities of New Bedford, Dartmouth, Fairhaven, and Acushnet, Bristol County, Massachusetts; and

WHEREAS, pursuant to its September 1998 Record of Decision for the Upper and Lower Harbor ("the 1998 ROD"), EPA has obtained an easement with the City for

the parcel of land located at New Bedford Assessor's Plat 93, Lot 120, with an address of 103 Sawyer Street in the City of New Bedford (hereinafter referred to as "the Sawyer Street facility") which parcel is subject to a recorded Grant of Environmental Restriction as reflected in Exhibit B to this Agreement; and

WHEREAS, EPA requires exclusive use and access to an additional five thousand (5,000) square feet directly south of the Sawyer Street facility and to the land between high tide and low tide at the easterly end of Sawyer Street to implement the remedial action in the 1998 ROD and any subsequent CERCLA remedy documents issued for the Site ("the Licensed Area"). A diagram of the Licensed Area is delineated on Exhibit A of this Agreement, which is incorporated herein by this reference; and

WHEREAS, the Parties desire to establish an agreement whereby EPA, its representatives, agents, contractors and subcontractors would be granted exclusive use and access until May 15, 2016, renewable at the discretion of the Parties, to the Licensed Area to implement the 1998 ROD and any subsequent CERCLA remedy documents issued for the Site; and

WHEREAS, Parties have determined that it is in their best interests to enter into this License Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and the authorities referenced above, the Parties agree as follows:

**1. LICENSE AGREEMENT; PROPERTY COVERED**

The exclusive use and access in, on, over and across the Licensed Area through and including May 15, 2016, beginning with the date exclusive use and access is given to EPA being the date this Agreement is executed by the City, for use by EPA, its

representatives, agents, and contractors as a work area including the right to park vehicles; the right to move, store and remove equipment and supplies and erect temporary structures on the land including buildings, pumping stations, water treatment plants, and fencing, and to perform any other work necessary and incident to design and construction of the 1998 ROD and any subsequent CERCLA remedy documents issued for the Site; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the Licensed Area.

## **2. ACCESS**

The area shown in Exhibit "A" shall be fenced off from the rest of Sawyer Street by EPA, with EPA's access permitted from Lot 120, from the Acushnet River, or from Sawyer Street through a gate installed in the fence by EPA.

## **3. CONDITION OF PREMISES**

EPA acknowledges and understands that this Agreement is entered into without any obligation on the part of the City to make alterations, repairs, or additions to the Licensed Area shown in Exhibit A. Upon written notice by EPA to the City of the need to discontinue the Licensed Area as a public way to implement the 1998 ROD and any subsequent CERCLA remedy documents issued for the Site, the City will, within 90 days of receipt of EPA's written notice, discontinue the use of the Licensed Area as a public way for the duration of the License; provided that nothing in this Agreement prevents EPA from taking possession of the Licensed Area and erecting a fence on the Licensed Area upon the effective date of this Agreement.

#### **4. RESTRICTED ACTIVITIES**

The City shall not perform, suffer, allow or cause any person to perform any of the following activities in, on, upon, through, over or under the Licensed Area or portions thereof:

A. Residential, commercial, industrial, day care, school, hotel, motel, community center, agricultural or marine use or activities, and/or recreational uses or activities;

B. Extraction, consumption, or utilization of groundwater underlying the Licensed Area, including without limitation, extraction for potable, recreational, commercial, industrial, irrigation, or agricultural use;

C. Excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground, the underlying soil, or shoreline sediment in any subtidal or intertidal or upland area;

D. Constructing or placing buildings or structures in, on or under the land or in any subtidal, intertidal area or upland area; and

E. Any activity or use that would interfere with, or would be reasonably likely to interfere with any aspect or component of the response action in the 1998 ROD and any subsequent CERCLA remedy documents issued for the Site, including any water treatment facility, dewatering facility, groundwater monitoring wells, air monitoring stations, gas collection system, or any barrier, membrane or sheet pile wall associated with a confined disposal facility.

#### **5. PROTECTION OF PROPERTY**

EPA shall keep the Licensed Area in good order and in a safe condition by and at

the expense of EPA. In the event that EPA or its employees or agents in the exercise of this exclusive use and access results in damage to the real property, EPA will, at its option, either repair such damage or make an appropriate settlement with the City. In no event shall such repair or settlement exceed the fair market value of the fee interest of the Licensed Area at the time immediately preceding such damage. EPA's liability under this clause may not exceed appropriations available for such payment and nothing contained in this Agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the City may have to make a claim under applicable laws for any other damages than provided herein.

**6. IMPROVEMENTS ON THE LICENSED AREA**

All tools, equipment, buildings, improvements, and other property taken upon or placed upon the Licensed Area by EPA shall remain the property of EPA and may be removed by EPA at any time during the term of this Agreement, unless otherwise agreed to by the Parties. At the termination of this Agreement, EPA shall return the Licensed Area to the same condition existing at Licensed Area upon the effective date of this Agreement.

**7. DURATION**

This Agreement shall commence on the date of execution by the City, provided ~~that the City has discontinued the use of the Licensed Area as a public way,~~ and will remain in full force and effect until May 15, 2016, with renewal at the discretion of the Parties. The Parties agree that this License is being provided for the duration

12/23/15 

established under this Agreement with no daily usage fee/consideration being charged. Either Party may terminate this Agreement at any time and for any reason provided that if the City terminates the Agreement, it provides EPA with written notice thereof 12 years in advance of the effective termination date or written notice equivalent to the number of days remaining for the term of this Agreement. Said notice shall be computed commencing the day after the date of mailing.

**8. CONTACT PERSON**

As of the date of this Agreement, whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing.

The City of New Bedford contact person is:

Mayor	With copy to
City of New Bedford	City Solicitor
133 William Street	133 William Street
New Bedford, MA 02740	New Bedford, MA 02740

The EPA contact person is:

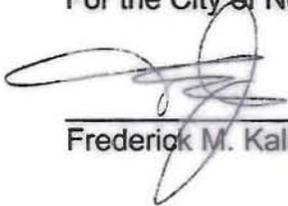
New Bedford Harbor Remedial Project Manger  
U.S. EPA  
One Congress Street  
Suite 1100 (HBO)  
Boston, MA 02114

Any notice required to be given hereunder shall be in writing and shall be deemed received upon receipt if by hand delivery, express mail, facsimile or computer E-mail, or if by first-class mail, five days after deposit into the U.S. postal system, except for Notice of Termination, which is addressed in paragraph 7.

**WHEREAS**, the Parties have executed this Agreement, and by doing so, represent and warrant that they are fully authorized to bind their respective organization to the terms hereof.

THE PARTIES EXPRESSLY AGREE THAT THIS IS NOT A LEASE BUT RATHER A MERE LICENSE TO OCCUPY THE PROPERTY.

For the City of New Bedford



\_\_\_\_\_  
Frederick M. Kalisz, Jr. , Mayor

\_\_\_\_\_  
Date

For the United States Environmental Protection Agency

*Susan Studien*

\_\_\_\_\_  
Susan Studien, Director  
Office of Site Remediation & Restoration

*12/27/05*

\_\_\_\_\_  
Date

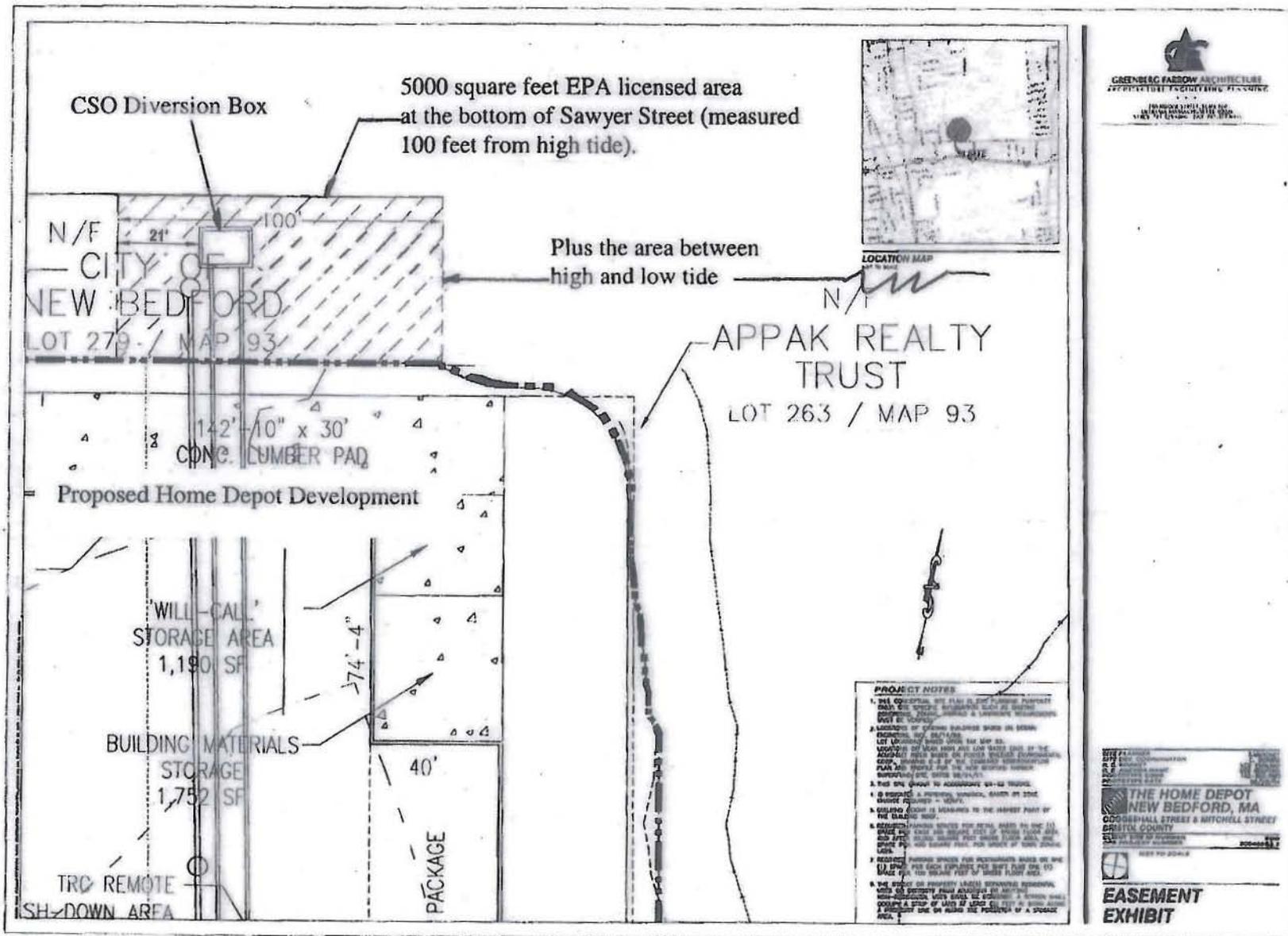


Exhibit A



**Proposed City Work at the End of Sawyer Street**

**ElaineT Stanley** to: Ronald Labelle

09/21/2010 04:33 PM

Dave Dickerson, David Peterson, Doug Gutro, ElaineT Stanley,  
Cc: Jeanethe Falvey, Kimberly White, ManChak Ng, Maryellen.lorio,  
paul.g.lheureux, "Mayor Scott W. Lang", Cynthia Catri

From: ElaineT Stanley/R1/USEPA/US  
To: "Ronald Labelle" <Ronald.Labelle@newbedford-ma.gov>  
Cc: Dave Dickerson/R1/USEPA/US@EPA, David Peterson/R1/USEPA/US@EPA, Doug Gutro/R1/USEPA/US@EPA, ElaineT Stanley/R1/USEPA/US@EPA, Jeanethe Falvey/R1/USEPA/US@EPA, Kimberly White/R1/USEPA/US@EPA, ManChak

---

Hi Ron,

We have verified that the Sawyer Street area in question is owned by the City of New Bedford and that EPA has a license for an approximately 5,000 sf area at the end of Sawyer Street (length of eastern end varies with the tide). Attached please find the license between EPA and the City (Exhibit A in the license shows the area).

Regarding the short term work you are proposing, cleanup of the area is fine. However, the jersey barrier structure (EPA-owned) has a fence which runs along the top of it to keep people out of the licensed area. During the cleanup work, the City would be responsible for securing the area at the end of each day. Until we work out any different arrangement, the City will also be responsible for removal and replacement of the barriers or some type of barrier to keep people out of the licensed area, as EPA would face potential liability issues if something were to happen to any trespassers. EPA would not be opposed to the City installing a more aesthetically appealing fence to replace the present jersey barrier structure, but it must be effective in preventing access.

I understand that you will be putting together a plan showing the work the City is proposing for the area. I am planning on being at the Sawyer St. site tomorrow. If your time allows, we could meet to view the area in question and discuss further. You may reach me on my cell phone at 401-441-1226.

Regards,

Elaine



License for Area at End of Sawyer St.pdf

