

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 27th 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

12/28/15 

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:

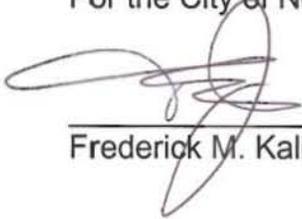
New Bedford Harbor Remedial Project Manger
U.S. EPA
One Congress Street
Suite 1100 (HBO)
Boston, MA 02114

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

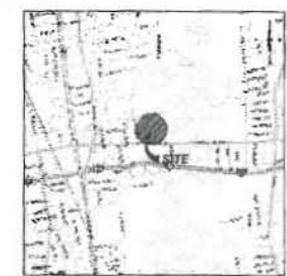
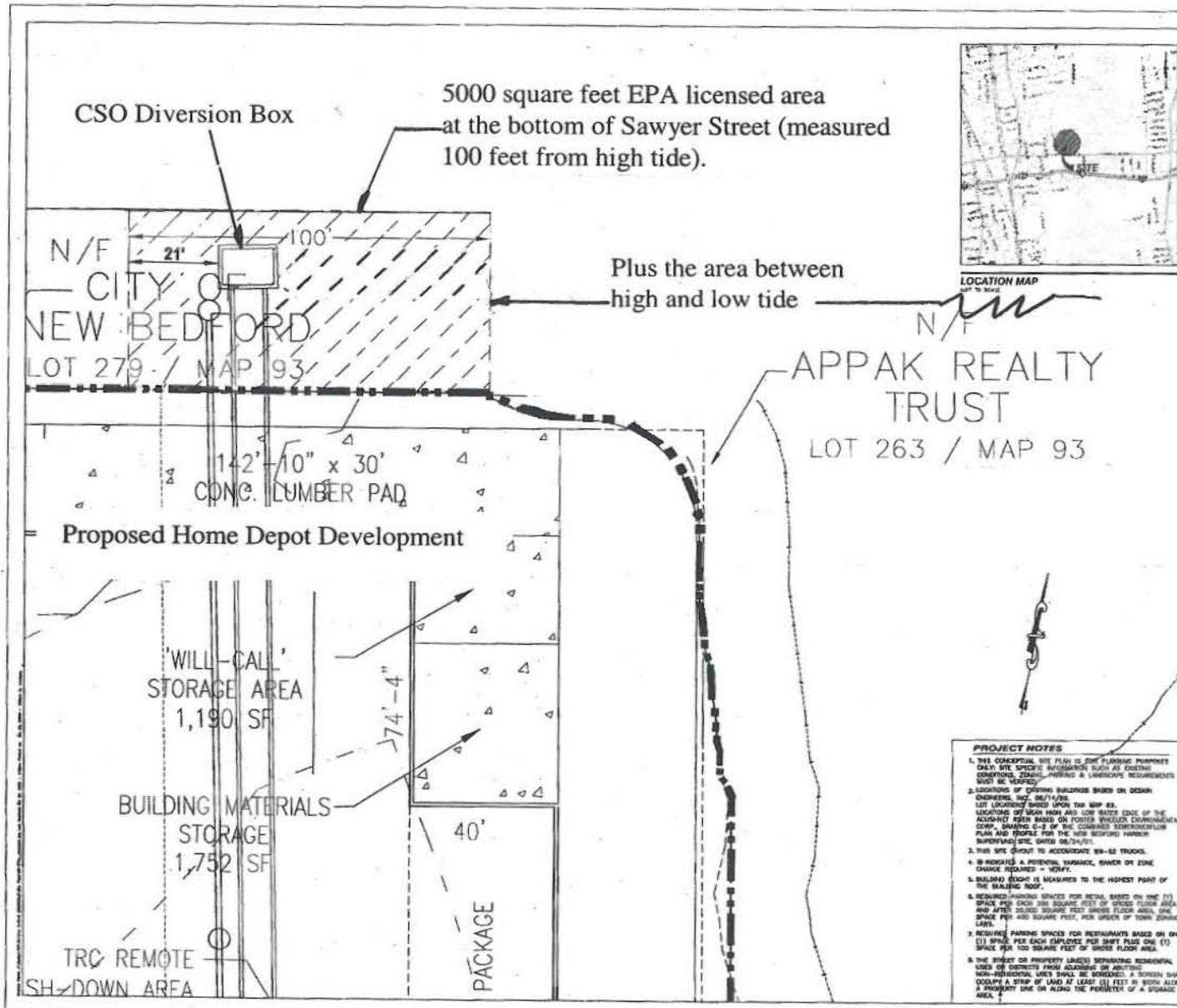
For the United States Environmental Protection Agency

Susan Studlien

Susan Studlien, Director
Office of Site Remediation & Restoration

12/27/05

Date



GREENBERG FARROW ARCHITECTURE
 ARCHITECTURE ENGINEERING PLANNING
 100 WASHINGTON STREET, SUITE 100
 NEW BEDFORD, MASSACHUSETTS 01909
 508-451-1000 FAX 508-451-1001

LOCATION MAP

- PROJECT NOTES**
1. THIS CONCEPTUAL SITE PLAN IS FOR PLANNING PURPOSES ONLY. SITE SPECIFIC INFORMATION SUCH AS EXISTING CONDITIONS, ZONING, PERMITS & LANDSCAPE REQUIREMENTS MUST BE OBTAINED.
 2. LOCATIONS OF EXISTING BUILDINGS BASED ON DESIGN ENGINEERS, INC. (DEI) DATA.
 3. LOT LOCATIONS BASED UPON THE MAP 93.
 4. LOCATIONS OF HIGH AND LOW WATER EDGE OF THE ADJACENT TIDES BASED ON TIDE GAUGE INFORMATION, CORP. DRAWING C-3 OF THE COMBINED SEWER/STORMWATER PLAN AND PROFILE FOR THE NEW BEDFORD HARBOR SUPERFUND SITE, DATED 08/24/91.
 5. THIS SITE SUBJECT TO APPROPRIATE W-52 TRUCKS.
 6. IF REQUIRED, A PRELIMINARY VARIANCE, REVIEW OR ZONE CHANGE REQUIRED - VERIFY.
 7. BUILDING EIGHT IS MEASURED TO THE HIGHEST POINT OF THE BUILDING ROOF.
 8. REQUIRED PARKING SPACES FOR RETAIL BASED ON ONE (1) SPACE PER 300 SQUARE FEET OF GROSS FLOOR AREA AND AFTER 3000 SQUARE FEET GROSS FLOOR AREA, ONE SPACE PER 400 SQUARE FEET, PER ORDER OF TOWN ZONING LAW.
 9. REQUIRED PARKING SPACES FOR RESTAURANTS BASED ON ONE (1) SPACE PER EACH EMPLOYEE FOR SHIFT PLUS ONE (1) SPACE PER 100 SQUARE FEET OF GROSS FLOOR AREA.
 10. THE STREET OR PROPERTY LINES) SEPARATING RESIDENTIAL USES OR DISTRICTS FROM ADJACENT OR ADJOINING NON-RESIDENTIAL USES SHALL BE SCREENED: A SCREEN SHALL OCCUPY A STRIP OF LAND AT LEAST 150 FEET IN WIDTH ALONG A PROPERTY LINE OR ALONG THE PERIMETER OF A STORAGE AREA.

THE HOME DEPOT
 NEW BEDFORD, MA
 CDDGSHALL STREET & MITCHELL STREET
 BRISTOL COUNTY
 CLARKE SITE NO. 10000000
 508-451-1000
 10000000
 NOT TO SCALE

EASEMENT EXHIBIT

Exhibit A