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62383

LAND LEASE

BETWEEN

The City of New Bedford

AND

THE UNITED STATES OF AMERICA

1. THIS LEASE, made and entered into this 19th day of January in the year one thousand nine hundred and eighty-eight by and between

The City of New Bedford

whose address is City Hall
Williams Street
New Bedford, MA 02740

and whose interest in the property hereinafter described is that of

hereinafter called Lessor, and THE UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

2. The Lessor hereby leases to the Government the following described premises, viz:

See Attachment A

to be used for the following purpose: for use as a staging area and a temporary disposal facility for the New Bedford Harbor Pilot Dredging and Disposal Study, as described in Attachment B, hereto.

3. TO HAVE AND TO HOLD the said premises for the term beginning on the date of execution and continuing for five years, provided that unless and until the Government shall give notice of termination in accordance with provision 6 hereof, this lease shall remain in force thereafter from year to year without further notices; provided, however, that this lease shall not extend beyond ten years from the date of execution.

4. The Government shall have the right, during the existence of this lease to attach fixtures, and erect structures or signs, in or upon the premises hereby leased, which fixtures and structures, or signs, so placed in, upon or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government.

5. The Government may terminate this lease at any time by giving thirty (30) days notice in writing to the Lessor, and no rental shall accrue after the effective date of termination.

6. Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Government shall be addressed to the Lessor at

and if given by the Lessor shall be addressed to : U.S. Environmental Protection Agency
JFK Federal Building, Room 2203
Boston, MA 02203

7. The Lessor agrees that the Comptroller General of the United States or any duly authorized representatives shall, until the expiration of three (3) years after have access to and the right to examine any directly pertinent books, documents, papers and records of the Lessor involving transactions related to this lease.

8. Paragraphs 9 thru 18, starting on the following page, have been added and by this reference are hereby incorporated in the lease.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

In presence of:

APPROVED as to form & legality

Armand Fernandes, Jr.

Armand Fernandes, Jr.
City Solicitor

CITY OF NEW BEDFORD

By: *John K. Bullard* _____ (SEAL)
John K. Bullard *Lessor.*
Mayor

BOARD OF PARK COMMISSIONERS
CITY OF NEW BEDFORD

Christine J. Ferreira

Chairman

THE UNITED STATES OF AMERICA,

By: *Michael R. Deland*

Michael R. Deland
Regional Administrator
Environmental Protection Agency

(IF LESSOR IS A CORPORATION, THE FOLLOWING CERTIFICATE SHALL BE EXECUTED BY THE SECRETARY OR ASSISTANT SECRETARY.)

I,
certify that I am the
as Lessor in the attached lease; that
of the Lessor, was then
signed for and in behalf of said corporation by authority of its governing body, and is within the scope
of its corporate powers.

Secretary of the corporation named
who signed said lease on behalf
of said corporation; that said lease was duly

(Corporate Seal)

ADDITIONAL PARAGRAPHS

9. The City shall have reasonable access to the property through its employees or designated representatives, including reasonable access for the purpose of taking samples. The City shall have reasonable access to any records relating to sampling, testing or monitoring and the results of such sampling, and will be provided with copies of such records within a reasonable time. The Government shall give the City reasonable advance notice of sampling, and the Government shall provide split portions of samples when requested to do so in advance by the City.

10. The Government shall, at its own expense, provide for all necessary security measures including erection and maintenance of adequate fencing in order to prohibit and prevent any unauthorized access to the leased premises.

11. The Government shall be liable for injuries to persons or damages to property caused by negligent acts or omissions of its employees in accordance with the provisions of the Federal Tort Claims Act, and, to the extent authorized by law, shall pay liability judgments that arise from releases of hazardous substances caused by its contractors' negligence and

that exceed the contractors' insurance coverage. All personal property of the Government, its agents, employees, visitors, licensees, contractors or suppliers, in and on said Premises, shall be and remain at their sole risk, and the Lessor shall not be liable to them for any damage to, or loss of, such personal property arising from any act of negligence of any other persons, or resulting from fire, explosion, flooding, rain or snow, or from any other cause whatsoever.

12. The Government shall surrender possession of the premises upon the expiration or termination of this lease and shall return the premises in as good condition as that existing at the time of entering upon the same under this lease, by reasonable and ordinary wear and tear and damage by the elements or by Acts of God over which the Government has no control excepted. Notwithstanding this paragraph, the Government may determine that the premises should be used in the course of further remedial actions to be taken in New Bedford Harbor under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. s 9601 et seq. (CERCLA), and such use may include use of the premises as a permanent disposal site. In the event that the Government determines to make such further use of the premises, nothing in this

lease shall affect any rights of the City, including any rights to obtain compensation for any taking of its property, in which case the Government shall proceed according to the provisions of CERCLA. The Government may offer a cash settlement to the City in lieu of and equal to the cost of performance of its obligation, if any, to restore the real estate, personal property or both real and personal property. Should a mutually-acceptable settlement be made hereunder, the parties shall enter into a supplemental agreement hereto effectuating such settlement.

13. The Government hereby commits to reconstruct the soccer field which currently occupies a portion of the parcel to be leased, so that the entire soccer field is located on the portion of the parent parcel, as shown in Exhibit A, which will not be subject to this lease. Such reconstruction shall be completed and a regulation soccer field made available for use at the conclusion of the dredging portion of the project described in Attachment B, not later than July 31, 1988. Should the field not be completed by that date, a reasonable alternative arrangement for soccer shall be provided by EPA and the City.

14. The City of New Bedford warrants that the parcel to be leased is not subject to any rights of

use or access held by any third parties, except Club Recordacoes de Portugal, Inc., which license shall be limited to the area shown on Exhibit A, designated for the soccer field.

15. The Government shall not use the property subject to this lease for any purposes other than those described in Attachment B. No hazardous materials other than those described in Attachment B shall be stored, treated or disposed of at the Property.

16. In the event that the Government decides to abandon or terminate the project described in Attachment B before the commencement of construction, the Government shall so notify the City and this Lease shall terminate upon receipt of such notice by the City. In the event that the Government decides to abandon or terminate the project described in Attachment B after the Commencement of construction, the Government shall notify the City of its decision, and shall then, within a reasonable time, prepare the premises for return in accordance with paragraph 12. When the condition of the premises has been restored the Government shall so notify the City and this lease shall be terminated upon receipt of such notice by the City.

17. The parties agree that the City's granting of this lease constitutes a contribution to the costs of the Study described in Attachment B ("the Study"). It is the intent of the parties that any claims which the Government may have against the City for recovery of costs incurred by the Government in the course of the Study shall be settled in accordance with the provisions of 42 U.S.C. s 9622, and that in any such settlement, the value of this lease shall equal the City's share of the costs of the Study. In granting this lease, the City makes no admissions of fact or law, and does not waive any rights it may have to defend any claims by the Government or any other person in any proceeding of any kind.

18. The Government shall provide alternative parking arrangements to the extent necessary to replace any parking area in the parcel of land described in Attachment A which may become unusable in the course of the government's activities, including, if necessary, construction of a replacement parking area, which shall be paved and marked.

Attachment A

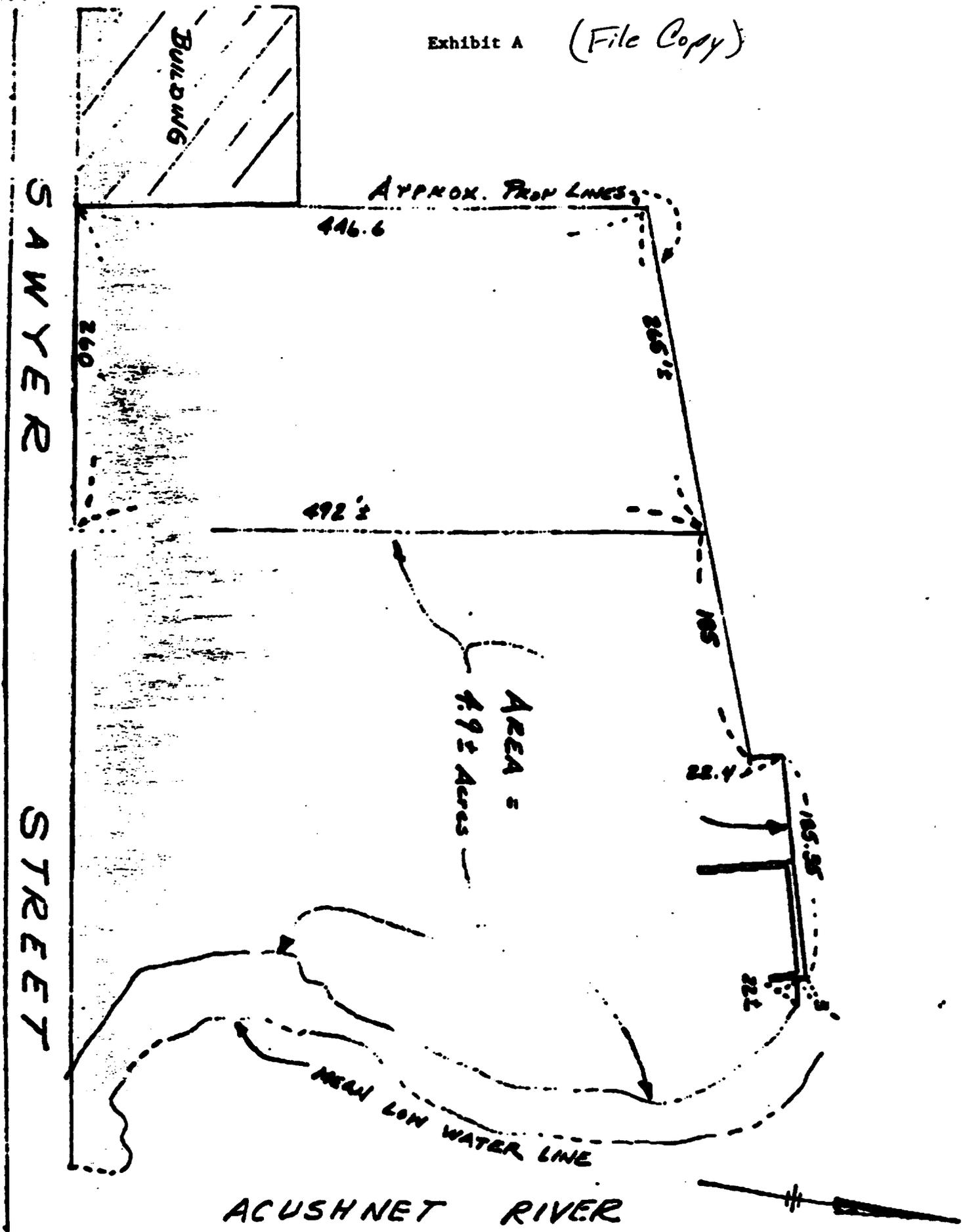
A certain parcel of land situated in the City of New Bedford, Bristol County and the Commonwealth of Massachusetts, bounded and described as follows:

Commencing at a point on the northerly side of Sawyer Street, so called, at a point two hundred sixty and 00/100, (260.00) feet from the southwest corner of the City of New Bedford property; Thence NO7 30' 00"W Four hundred ninety two (492) feet, more or less, by said land of the City of New Bedford, to a point at land of owners unknown; Thence Northeasterly One Hundred eighty six feet, more or less, in the course described in an agreement between the Soule Mill and Pierce Manufacturing Corporation dated December 14, 1901 and recorded in Bristol County (S.D.) Registry of Deeds, Book 225, Page 367; Thence Northerly Twenty - two and 40/100 (22.40) feet in a course described in an agreement between said Corporation dated November 22, 1909 and recorded in said Registry of Deeds, Book 323, Page 112; Thence Easterly in a course described in said last mentioned agreement, One hundred eighty - five and 35/100 (185.35) feet; Thence Southerly in a course described in said last mentioned agreement Three (3) feet; Thence Easterly Twenty one and 95/100 (21.95) feet; Thence Easterly to the channel of the Acushnet River; Thence Southerly by the channel of said River to the northerly sideline of Sawyer Street extended; Thence Westerly by the northerly sideline of said Sawyer Street extended and the northerly sideline of said Sawyer Street to the point of beginning.

Said parcel contains an area of 4.9 acres more or less and is more fully shown on Exhibit A.

This parcel is part of a parent parcel comprising 7.76 + acres, of which 0.16 + acres is in the Acushnet River. On 30 April 1946, the Commonwealth of Massachusetts Land court foreclosed its tax lien case against Hyman Krivoff and the City of New Bedford became the new owner as recorded with the Bristol County Registry of Deeds, Book 912, page 389.

Exhibit A (File Copy)



Attachment B

Testing of the northern portion of New Bedford Harbor has revealed PCB levels in the bottom sediments that exceed 30,000 parts per million. This area extends from the Coggeshall Street Bridge in New Bedford to the Wood Street Bridge in Acushnet. In August 1984, the Environmental Protection Agency (EPA) published a Feasibility Study of Remedial Action Alternatives for this area. This study proposed five cleanup alternatives, four of which dealt specifically with dredging the area to remove the contaminated sediments.

Comments EPA received on these dredging and disposal alternatives prompted them to ask the Corps of Engineers to perform additional studies to better evaluate the engineering feasibility of dredging as a clean up alternative. This study is ongoing at the Corps Waterways Experiment Station in Vicksburg, Mississippi.

A pilot study of dredging and disposal alternatives is proposed to support this engineering feasibility study. This study would be a small scale field test of several dredging and disposal techniques carried out on site. The need for such a study is particularly great at New Bedford due to our limited knowledge and experience in dredging and disposing of such highly contaminated sediment and where the data base for the impact of site specific factors on design is not available.

The study will evaluate three types of hydraulic dredges with the contaminated sediment being placed in two disposal sites. A confined disposal facility (CDF) will be constructed partially on land and partially in water. The CDF covers approximately 250,000 square feet and has dikes constructed around it. The dredged material is pumped into the site in a slurry consisting of 15 - 40% solids. The solids are allowed to settle out and the excess water is drained off the site and returned to the harbor after receiving treatment.

The CDF will be constructed to contain approximately 10,000 cubic yards of dredged material that will be removed from the cove located just to the north of the site.

Site Construction: The CDF will be constructed between January and April 1988. Approximately 24,500 cubic yards of granular material will be brought to the site and used in constructing the 1700 feet of dike, 700 feet of which is located below the high water line.

The second disposal site is called Confined Aquatic Disposal (CAD). The area dredged in removing the initial 10,000 cubic yards of material will be used as the CAD site. Approximately 2,500 cubic yards of contaminated sediment containing PCB levels in the 100 ppm range will initially be placed along the bottom of the CAD site. This material will then be capped with approximately 2,500 cubic yards of clean sediment taken from the estuary.

Monitoring and Site Security

Monitoring: An extensive monitoring program will be ongoing throughout this project. This program is designed to acquire sufficient data to support the technical objectives of the pilot study and to insure that public health and the environment are protected. The program involves monitoring the water quality throughout the harbor by checking both chemical and biological parameters for changes that may be caused by the dredging and disposal activities. Air monitoring stations will also be set up around the operation. Pilot study operations will be modified or stopped if significant increases in the level of contaminants are detected at the Coggeshall Street Bridge. Increases will be evaluated by comparison with background contaminant levels determined by monitoring prior to the start of operations.

Monitoring efforts focused on the CDF include the installation of an array of wells to allow the Government to analyze the leachate from the site. These wells would remain in place for the duration of the lease and would be sampled on a regular basis. An air monitoring station would be set up adjacent to the CDF. This monitoring would extend for a period after the dredging is completed.

The Government does not anticipate the release of harmful levels of PCBs into the air, or any other form of exposure to the public at or near the property. Discharges to the water are not expected to add significantly to existing background contamination. If significant increases are noted in the course of the study, the Government will immediately undertake appropriate measures. To the extent reasonably possible, the City will be notified of any such releases and consulted in advance with respect to any response measures.

The upland portion of the site will be excavated to an elevation of +5.0 Mean Low Water requiring the removal of approximately 17,500 cubic yards of material. This material would be used in reconstructing the athletic field with approximately 5,000 cubic yards being stockpiled on site for eventual use as additional cap material.

A sheet pile wall will also be installed to divide the CDF into two chambers. The top elevation of the wall will be +12.0 Mean Low Water.

Dredging: Dredging operations will be ongoing in April and May 1988. Approximately 5,000 cubic yards of sediment with PCB levels in the 100 parts per million range will be pumped into the site initially. An additional 5,000 cubic yards of clean material will then be pumped into the site to act as a cap. The dredged material enters the site in a slurry consisting of 80% water. The CDF acts as a retention basin where the solid material is allowed to settle out and the water is drained off and returned to the estuary.

Athletic Field: The soccer field will be rebuilt during this project. Material excavated from the CDF site would initially be placed on the field, raising the elevation slightly. The field would then be covered with topsoil and resodded. The field would be out of use from January to July 1988. A berm would be built at the north end of the field from material excavated from the CDF site. This berm would be six feet high and would separate the field from the cove.

Long Term Use of CDF: After dredging is completed in early June 1988 the dredged material will be allowed to consolidate and dry out over the summer and fall of 1988. The CDF will then be capped with the material that is stockpiled on the site. The eastern section of the CDF may not have consolidated sufficiently by this time to allow it to be capped. Capping would be completed in the spring of 1989 and the site would be topsoiled and seeded. The final elevation of the site will be approximately +10.0 Mean Low Water.

Security: A seven foot high chain link fence would be installed prior to the start of construction. Initially the entire area would be fenced off. Upon the completion of dredging the fence would be pulled back to enclose only the CDF site. This fence would remain in place for the duration of the lease.

Personnel on site: Government and contractor personnel will be on site daily during the CDF construction process and dredging operations (January - June 1988). After June, government personnel will periodically visit the site to sample the monitoring wells and check the condition of the area.