

MASSACHUSETTS PORT AUTHORITY
MARITIME PROPERTIES
MARINE FUELING LICENSE

THIS FUELING LICENSE (“License”) is entered into this ____ day of _____, 200__ by and between the MASSACHUSETTS PORT AUTHORITY, a body politic and corporate organized and existing pursuant to Chapter 465 of the Acts of 1956 of the Commonwealth of Massachusetts, as amended, located at One Harborside Drive, Suite 200S, East Boston, MA 02128-2909 (“Authority”), and _____, a _____ (corporation/limited liability company, etc.) with a principal place of business at _____ (“Licensee”). The Authority and Licensee may hereinafter be individually referred to as the “Party” and collectively, the “Parties”.

THE PARTIES acknowledge that:

WHEREAS, the Authority is the owner of the Boston Fish Pier (“Fish Pier”), the Black Falcon Cruise Terminal, Berths 1-9 (“Black Falcon”), and the Conley Marine Terminal (“Conley”), located in Boston, Massachusetts (collectively, the “Piers”); and

WHEREAS, the Licensee is desirous of being granted a license by the Authority to deliver and supply fuel¹ to commercial fishing vessels and/or other commercial vessels² at the Piers; and

WHEREAS, the Authority is willing to grant such a license upon the terms and conditions contained herein;

NOW THEREFORE, in consideration of the covenants and conditions and the payment of fees set forth below, the Authority and the Licensee agree as follows:

1. The Licensee is hereby granted a non-exclusive License to use certain authorized fueling areas (the “Authorized Fueling Areas”), as designated by the Authority in its sole discretion, to deliver and supply fuel to commercial fishing vessels and/or other commercial vessels which are lawfully present at the Piers (“Fuel Service”). Fueling of commercial fishing vessels shall only be permitted at the Fish Pier. The Authorized Fueling Areas are indicated on the maps attached hereto as **Exhibit A**.

¹ “Fuel” is defined for the purposes of this License as marine diesel fuel, marine fuel oil (“MFO”), bunkers and related marine petroleum products. The transfer of gasoline is expressly prohibited by this License.

² “Commercial vessels” is defined for the purposes of this License as vessels other than commercial fishing vessels and recreational vessels. Fueling of recreational vessels is expressly prohibited by this License.

2. Licensee shall obtain, and at all times during the Term of this License be in valid possession of, a Marine Fuel Resale Permit, or such other permit issued by the Massachusetts State Fire Marshal's Office for mobile and/or vessel/barge fueling facilities, as applicable ("Permit"), a copy of which Permit (with a copy of Licensee's Application for Permit) shall be attached hereto as **Exhibit B**.
3. This License shall be effective from _____ for a period of twelve (12) months, and shall terminate at 11:59 p.m. on _____ (the "Term"), subject to early termination in accordance with the terms herein.
4. The Parties acknowledge that the Licensee has paid to the Authority, as part of the application process for this License, an annual fee ("License Fee") in the amount of Three Thousand Dollars (\$3,000.00).
5. The Licensee will observe, obey and adhere to, and will cause its employees, agents, and invitees to observe, obey, adhere to, all applicable rules and regulations and standards of local, state and federal agencies having to do with public safety, environmental controls and pollution of the environment in its operations and processes and use of the Piers pursuant to this License including, without limitation, the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA" or "Superfund"); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 7401 et seq. ("RCRA"); the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et seq. ("TSCA"); the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§ 1801 et seq.; the Federal Water Pollution Control Act, 33 USC 1321 et seq. (particular attention is drawn to 40 CFR parts 110, 112 and 114); the Federal Oil Pollution Act, 33 U.S.C. 2701 et seq.; the Massachusetts Hazardous Waste Management Act, Mass. Gen.L. c. 21C §§ 1 et seq.; Mass. Gen.L. Ch. 21 §§ 1 et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. Gen.L. c. 21E §§ 1 et seq.; the Massachusetts Toxic Use Reduction Act, Mass. Gen.L. c. 21I §§ 1 et seq.; the Massachusetts Contingency Plan ("MCP") 310 CMR 40.00 et seq.; the Minimum Spill Notification Procedures attached hereto as **Exhibit C**, and all other local, state and federal statutes and regulations, whether or not explicitly referred to herein, which are or may be applicable to the Fuel Service authorized by this License (hereinafter collectively referred to as "Environmental Laws"), and Licensee will refrain from any and all acts, uses or processes on property of the Authority which are not in full conformity with said Environmental Laws.
6. Licensee shall defend, indemnify and hold harmless the Authority from and against any and all costs, damages and expenses incurred and/or loss sustained (including reasonable attorneys' and experts' fees and other expenses), or penalties imposed by agencies by law authorized to do so, arising out of the failure of Licensee, its agents, employees, invitees, guests, contractors, subcontractors, licensees, users or customers to observe, obey and comply with the Environmental Laws (including, but not limited to, any costs, damages, expenses

incurred, loss sustained or penalties imposed pursuant to Licensee's operations and obligations under this License. Said "expenses incurred" shall include, without limitation, all loss or expense directly associated with remedying the condition or conditions not in conformity with the Environmental Laws, including but not limited to the costs of remediating any real property and any personal injury resulting from or arising out of the release of oil or hazardous materials into the natural environment, together with all loss sustained by reason of business interruptions occasioned by executive, administrative or judicial order consequent upon the Environmental Laws, or business interruption directly consequent upon the remedying of the condition not in conformity with the Environmental Laws. This indemnification shall survive the expiration or earlier termination of this License.

7. The Licensee shall comply with all federal and state laws, rules, regulations and procedures, as well as all applicable local rules, regulations and procedures pertaining to the Fuel Service authorized by this License, including the Federal Ports and Waterways Safety Act, 33 U.S.C. §§ 1221 et seq.; 33 CFR 154, 155 and 156; the Board of Fire Prevention Regulations, Mass. Gen.L. Ch. 148 (including compliance with 527 CMR 8.00 and 527 CMR 15.00), and all other local, state and federal statutes and regulations, whether or not explicitly referred to herein, which are or may be applicable to the Fuel Service authorized by this License (hereinafter collectively referred to as "Fire Safety Laws"), and Licensee will refrain from any and all acts, uses or processes on property of the Authority which are not in full conformity with said Fire Safety Laws.
8. Prior to commencing each Fuel Service operation permitted herein, the Licensee and the vessel owner/operator shall hold a pre-transfer conference and complete a Declaration of Inspection ("DOI"), which shall be kept by the Licensee during the Fuel Service operation. The Licensee and the vessel owner/operator shall be known, respectively, as the "Shore Person in Charge" and the "Vessel Person in Charge" for purposes of signing and initialing the items contained in the DOI. When the Fuel Service operation is complete, and at the earliest opportunity, Licensee shall send a copy of the completed and signed DOI to: Massachusetts Port Authority, Attn: Manager Maritime Regulatory Affairs, One Harborside Drive, Suite 200S, East Boston, MA 02128-2909 or faxed to (617) 946-4496. A sample DOI is attached hereto as **Exhibit D**. In lieu of the sample DOI attached hereto, Licensee may use and submit its own standard DOI to the Authority, as provided herein.
9. Licensee shall maintain all certificates, permits or licenses required by federal, state or local instrumentalities (including the Marine Fueling Permit (Annual) issued to Licensee by the Authority with this License, a copy of which shall be in Licensee's possession at all times during Fuel Service operations at the Piers), copies of which the Licensee shall provide to the Authority upon demand.
10. Licensee shall, at its sole cost and expense, provide and keep in force at all times during the Term of this License, for the mutual benefit of the Authority and Licensee, the following insurance coverage:

(i) Commercial General Liability Insurance against all claims for bodily injury, death or property damage occurring on or about the Piers, or arising out of the Licensee's Fuel Service and completed operations/products, with limits of not less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury or death to any number of persons with respect to any one accident or occurrence, and Two Million Dollars (\$2,000,000) for property damage per accident or occurrence, including endorsements to cover all the claims, penalties and response costs arising from a spill of oil or any hazardous substance into the navigable waters of the United States, in the single limit or equivalent split limit amount of Two Million Dollars (\$2,000,000) per person/per occurrence. Such insurance shall be primary over any other policy of insurance which may be owned by the Authority, shall include a contractual liability endorsement covering Licensee's indemnities under this License and shall name the Authority as an additional insured, specifying that said coverage applies to Fuel Service operations;

(ii) Comprehensive Automobile Liability and Property Damage Insurance covering all owned vehicles, hired vehicles or non owned vehicles for all personal and property damages subject to a minimum limit of One Million Dollars (\$1,000,000) for damages arising out of personal injury or destruction of property;

(iii) Workers' Compensation as required by law and Employer's Liability insurance in the minimum amount of One Million Dollars (\$1,000,000).

Each policy of insurance required hereunder shall be in a form and with a company satisfactory to the Authority that is authorized to do business in Massachusetts and having a so-called A.M. Best's Rating of "A-" or better. Certificates evidencing such insurance shall be delivered to the Authority prior to the Commencement Date of the Term. Upon the Authority's request, Licensee shall deliver copies of such insurance policies to the Authority. Such policies shall contain a provision that they cannot be canceled or modified unless the Authority is given at least ten (10) days prior written notice of such cancellation or modification, and a provision that any loss payable thereunder shall be payable notwithstanding any act or negligence of the Authority or Licensee which might, absent such provision, result in a forfeiture of all or part of the payment of such loss.

11. To the fullest extent permitted by law, Licensee shall, at its sole cost and expense, defend, indemnify and hold harmless the Authority, its members, officers and employees, from and against any liability for injury, loss, accident, or damage to any person or property, and from any third party claims, causes of action, suits, proceedings, losses, damages, fines and expenses in connection therewith, including legal counsel fees, arising from any actions, omission, fault, negligence or other misconduct of Licensee, its employees, agents, contractors, invitees, guests or vendors, or arising from any provision of this License or any use made or thing done on or about the Piers or otherwise occurring on the Piers, which in any way is related to Fuel Service, and not solely due to any willful misconduct or gross negligence of the Authority, its agents, servants or employees. The foregoing express

obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Authority which would exist at common law or under another provision of this License, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this License. This indemnity provision shall survive any termination of this License.

12. The Authority may terminate, revoke or suspend this License at any time, upon written notice to Licensee (and in case of emergency, the Authority may suspend this License by verbal notice), in the event the terms of this License are violated or for any reason in the Authority's sole discretion. In addition, the Authority may restrict or suspend access to the Piers, in the event that the public safety, operation or security of the Piers or the Port of Boston so requires, as determined in the Authority's sole and absolute discretion.
13. During the exercise of rights hereby granted, Licensee shall at all times conduct itself so as not to interfere with the Authority's operations or use of the Piers by the Authority, its employees, contractors, subcontractors, tenants, licensees, vendors, guests or invitees at the Piers or transiting in or around the Piers. In addition, Licensee shall follow the directives of the Authority's employees, including but not limited to public safety and security personnel, at all times.
14. Licensee shall assume complete responsibility for damage or loss to the Piers or property on, adjacent to or near the Piers caused by Licensee, its officers, employees, agents, contractors, and invitees.
15. This License sets forth the entire agreement between the Parties and may be amended or modified only by a writing signed by both Parties.
16. This License shall not be assigned or otherwise transferred in whole or in part, without the prior written consent of the Authority, which can be given or denied in the Authority's sole discretion. Licensee shall in all events remain liable under the License.
17. Licensee agrees that in or about the Piers, or in any Fuel Service operations performed in or about the Piers, it shall employ only labor which can work in harmony with all elements of labor being employed at the Piers.
18. Licensee and the Authority hereby waive trial by jury in any action, proceeding or counterclaim brought by either Party against the other or any matter whatsoever arising out of or in any way connected with this License, the relationship of the Authority and Licensee created hereby, Licensee's use of the Piers, and/or any claim for injury or damage. In the event the Authority commences any action or proceeding for non-payment of charges or sums due hereunder, Licensee shall not interpose any counterclaim of any nature or description in any action or proceeding, but such claim shall be relegated to an independent action of law.

19. With respect to its exercise of all uses, rights and privileges herein granted, Licensee agrees that it shall not discriminate against any person because of race, color, creed, national origin, age, sex, sexual orientation, handicap or veteran status and Licensee shall comply with all of the terms and conditions set forth in **Exhibit E**, attached hereto.

20. The person executing this License on behalf of Licensee certifies and represents that he/she has authority and power to bind Licensee to the obligations set forth herein and to sign on its behalf.

Executed as of the date first written above.

MASSACHUSETTS PORT AUTHORITY

[LICENSEE NAME]

By: _____

By: _____

Michael A. Grieco

Name: _____

Assistant Secretary-Treasurer

Title: _____

Date: _____

Date: _____

Exhibits:

- Exhibit A Authorized Fueling Areas
- Exhibit B Licensee's State Fire Marshal Application for Permit and Permit
- Exhibit C Minimum Spill Notification Procedures
- Exhibit D Declaration of Inspection (DOI)
- Exhibit E Nondiscrimination and Affirmative Action

EXHIBIT A

AUTHORIZED FUELING AREAS

SAMPLE

EXHIBIT B

LICENSEE'S STATE FIRE MARSHAL
APPLICATION FOR PERMIT AND PERMIT

(Attach copies)

SAMPLE

EXHIBIT C

MINIMUM SPILL NOTIFICATION PROCEDURES

If a fuel spill occurs, the Licensee's Spill Response Coordinator must immediately telephone:

- | | |
|--|----------------|
| (1) United States Coast Guard | (617) 223-5750 |
| (2) Boston Fire Department | 911 |
| (3) Massport Police | (617) 330-1565 |
| (4) Mass. DEP's Emergency Response Branch
(immediately but NO MORE THAN
TWO HOURS after the spill is discovered) | (888) 304-1133 |
| (5) United States Coast Guard
National Response Center | (800) 424-8802 |

Note: The above contact numbers are also listed on the front of the Authority's Marine Fueling Permit (Annual), a copy of which Licensee is required to have in its possession at all times during Fueling Operations.

In addition to the above notification requirements, if a spill occurs involving a release of oil and/or hazardous material, it is the Licensee's responsibility to immediately contain and clean up the spill and/or make arrangements with its Emergency Response Contractor for immediate containment and clean up. Licensee and Licensee's Spill Response Coordinator should refer to the Massachusetts Contingency Plan ("MCP"), 310 CMR 40.00, for further spill response procedures.

EXHIBIT D

Declaration of Inspection (DOI)

SAMPLE

EXHIBIT E

NONDISCRIMINATION and AFFIRMATIVE ACTION

With respect to Licensee's exercise of all uses, rights and privileges at the Piers, Licensee agrees that Licensee, its successors in interest, sublessees, licensees, operators and assigns shall:

- (a) not discriminate against any person, employee or applicant for employment (i) because of that person's membership in any legally protected class, including but not limited to their race, color, gender, religion, creed, national origin, ancestry, age being greater than forty years, sexual orientation, handicap, genetic information, or Vietnam era veteran status, or (ii) who is a member of, or applies to perform service in, or has an obligation to perform service in, a uniformed military service of the United States, including the National Guard, on the basis of that membership, application, or obligation. Licensee shall undertake affirmative action measures designed to guarantee and effectuate equal employment opportunity for all persons in its use of the Piers, including the hiring and discharging of employees, the provision or use of services, and the selection of suppliers and contractors;
- (b) conspicuously post notices to employees and prospective employees setting forth the Fair Employee Practices Law of the Commonwealth of Massachusetts, to the extent required by applicable law;
- (c) comply with all federal and state laws, rules and regulations and Landlord's rules and regulations pertaining to Civil Rights and Equal Opportunity, including, but not limited to, 49 CFR Subtitle A, Part 21; 49 CFR Part 23; and 14 CFR Part 152, Subpart E, Executive Orders 11246 and 11478; and Section 504 of the Rehabilitation Act of 1973, all as applicable and as may be amended, unless otherwise exempt therein;
- (d) shall indemnify and hold harmless the Authority from any claims and demands of third persons resulting from Licensee's non-compliance with any of the provisions of this Exhibit E and in case of termination or cancellation of this License pursuant to Paragraph 10, the Licensee shall indemnify the Authority during the remainder of the original Term against any loss or damage suffered by reason of such termination

Licensee's non-compliance with the provisions of this Exhibit E shall constitute a material breach of this Agreement, for which the Authority may, in its discretion, upon failure to cure said breach within thirty (30) days of the written notice thereof, terminate this Agreement upon five (5) days written notice.