



HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE

SPECIAL MEETING

DATE: May 4, 2015 (Monday)
TIME: 6:30 p.m. to 7:00 p.m.
LOCATION: Room 209, Second Floor
Portland City Hall

AGENDA

1. Review and Recommendation to City Council to approve the Amended and Restated Lease with Nova Star Cruises at Ocean Gateway – See enclosed Memorandum from Greg Mitchell. **Note:** The Committee may go into executive session pursuant to 1 M.R.S.A. 405(6)(C) and (F) and 5 M.R.S.A. 13119-A to provide guidance to staff.

Public Comment will be accepted on action items.

Councilor Kevin Donoghue, Chair

Next Meeting Date: May 13, 2015



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Housing and Community Development Committee (HCDC)

FROM: Greg Mitchell, Economic Development Director

DATE: May 1, 2015

SUBJECT: Review and recommendation to City Council to Approve the Amended and Restated Lease Agreement with Nova Star Cruises Limited

I. SUMMARY OF ISSUE

On April 22, the HCDC reviewed a draft Amended and Restated Lease (ARL) with Nova Star Cruises Limited. The one unresolved issue, at that time, related to maintenance responsibility for the “roll-on and roll-off” City ramp. This issue is resolved as detailed in this memo. No other changes to the draft ARL have been made since the April 22nd HCDC meeting.

Background

On April 7, 2014, the City Council authorized the City Manager to execute a lease with Nova Star Cruises for use of Ocean Gateway for ferry service connecting the Port of Portland, Maine with Yarmouth, Nova Scotia. Nova Star has approached the City for amendments to the lease, including, among others noted below, a shortened season, originally May 1 to October 31 – shortened to June 1 to October 14.

ARL Overview

Attached is a proposed Amended and Restated Lease (ARL), with Nova Star Cruises Limited, which has been negotiated under the direction of the HCDC. An overview of the Amended and Restated Lease (ARL) terms is provided below.

Seasonal exclusive use, at certain times, of the following Ocean Gateway facilities and property:

- ***Queuing Area*** during certain times of day – originally 5:00 p.m. to 11:00 p.m., amended to 4:30 p.m. to 9:30 p.m. during the Operating Season.
- ***Berthing*** – originally 7:00 p.m. to 11:00 p.m. daily, amended to 6:30 p.m. to 9:30 p.m., during the Operating Season, except when cruise ships are in port Vessel arrival time shall be

7:00 p.m. It will be Tenant's responsibility to track scheduled cruise ship visits in order to ensure proper berthing time.

- **Roll-on, Roll-off Ramp** – Amended lease has Tenant responsible for all repairs and maintenance of the ramp during Operating Season, including the two weeks immediately before and the two weeks immediately after the Operating Season.
- **Terminal Building** – No change to original lease. Original lease gives Tenant exclusive daily use of the ground floor of the Terminal Building at Ocean Gateway for Custom Border and Protection screening between the hours of 5:00 p.m. and 9:00 p.m. during the operating season.
- **Receiving Building** – Original lease gives Tenant non-exclusive use of the Receiving Building between 9:00 a.m. and 9:00 p.m. for passenger waiting area and rest rooms. The ARL allows Tenant to use the Receiving Building for ticketing and requires Nova Star to conduct daily cleaning. Use of the Receiving Building is “as is”, which means any changes to building requested by Tenant shall be implemented at Tenant's sole expense with Landlord approval.
- **Departure Building** - Original lease gives Tenant 24/7 exclusive use of the Departure Building for office and ticketing operations, as well as for general passenger support purposes, at an annual amount as rent of \$19,200; the ARL has the Tenant not using the Departure Building.
- **Parking** - Original lease allows Tenant all day parking spaces for up to five (5) employees, and part-time parking (original start time at 5:00 p.m. changed to 4:00 p.m. to 12:00 midnight) for up to ten (10) additional part-time parking spaces at a mutually agreeable cost and location; the ARL increases 5 full-day parking spaces to 7 and increasing 10 additional part-time parking spaces to 15, all located at the Thames Street parking lot. There are no changes to the parking rates.
- **Term** - There are no changes to the original lease term. Original lease allowed for a three (3) year initial term with three additional renewal terms: two, two-year renewal terms, and one-year renewal term. Renewals would be subject to mutual agreement.
- **City Fees** - See attached Lease Exhibit B for fees, with amendments to delete all references to first year fees and increase parking cost (due to the number of additional parking spaces), along with an increased cost to use the Receiving Building for ticketing. The ARL has berthing at \$1.00 per foot of overall vessel length per day, or \$15,900 monthly; monthly parking will be \$1,225; and monthly ground rent will be \$4,660.
- **Lease Deposit.** \$10,000 – paid at time of execution of original lease.

II. REASON FOR SUBMISSION

The ARL Agreement for use of Ocean Gateway requires City Council approval.

III. INTENDED RESULT

A recommendation from the HCDC to the City Council for the Acting City Manager to execute the ARL.

IV. COUNCIL GOAL ADDRESSED

Promote economic development in the City in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.

V. FINANCIAL IMPACT

Projected Lease rent and fee revenue is contingent upon the level of passenger, vehicle, and truck use. A conservative estimate is \$100,000 per season.

VI. STAFF ANALYSIS

Staff, working under the direction of the HCDC, negotiated the ARL agreement acceptable to both parties.

This matter is scheduled for a vote by the HCDC, in the form of a recommendation to the City Council, on April 22nd. This item has been placed on the April 27th City Council meeting Agenda for final action, as the May City Council meetings are reserved for budget discussions and Nova Star's second season starts June 1st.

VII. RECOMMENDATION

Staff recommends that the HCDC vote to forward this ARL to the City Council with a recommendation that the Acting City Manager be authorized to execute the ARL in substantial conformance to the attached ARL.

VIII. LIST ATTACHMENTS

- Proposed Amended and Restated Lease

AMENDED AND RESTATED
LEASE BY AND BETWEEN CITY OF PORTLAND AND
NOVA STAR CRUISES LIMITED
RE: OCEAN GATEWAY

THIS **AMENDED AND RESTATED** LEASE AGREEMENT dated as of _____ day of _____, 2015⁴ is by and between the City of Portland, Maine, Maine municipal corporation with a principal office at 389 Congress Street, Portland, Maine 04101 (the “**Landlord**”), and Nova Star Cruises Limited, a Canadian registered corporation with a principal office at 131 Sandy Run, Hammond Plains, Nova Scotia, Canada, B4B - 1X9 (the “**Tenant**”).

WHEREAS, Landlord and Tenant are parties to a Lease Agreement dated April 28, 2014 (the “Existing Lease”) for certain space ~~Landlord owns certain real property and improvements known as at the~~ Ocean Gateway, including a Receiving building and a Terminal building at 14 Ocean Gateway Pier, ~~and a Departure building (formerly known as the “Paint Building”) at 14A Ocean Gateway Pier,~~ and queuing and parking areas (collectively the “OG Facilities”) located at the Ocean Gateway Pier, Portland, Maine; and

WHEREAS, under the Existing Lease, Tenant ~~wishes to operate~~ an international ferry service between Portland, Maine and Yarmouth, Nova Scotia on a cruise ferry vessel known as the Nova Star, 161 meters in length, or other vessel supplied by Tenant and approved by Landlord; and

WHEREAS, both parties desire to continue the operation of the ferry service under the amended lease terms set forth herein; and ~~wish to continue service between Portland and Yarmouth (the “Service”) by a corporate affiliate of Tenant on vessel cruise ferry known as the Nova Star, 161 meters in length, or other vessel supplied by Tenant and approved by Landlord, which shall not be unreasonably withheld, supplied by Tenant or its corporate affiliates (the “Vessel”); and~~

WHEREAS, in order to memorialize the above, Landlord and Tenant desire that the Existing Lease be substantially amended and restated to modify the Existing Lease.~~Landlord wishes to lease to Tenant office, ticketing, and passenger support space and to provide passenger departure and receiving space, queuing, berthing and employee parking facilities (the “Premises”), for use by Tenant and its customers in the conduct of the Service;~~

NOW, THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are

hereby mutually acknowledged, Landlord and Tenant hereby mutually agree that the Existing Lease be amended and restated as of the Effective Date (as defined in Section 3).in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Premises.**

Landlord does hereby lease, demise and let unto **Tenant**, to have and to hold on the terms herein, subject to the reservation and condition in subparts below, the Premises identified herein and shown on Exhibit A, attached hereto and incorporated herein.

a. ~~24/7 Exclusive use space. The following space is available for the exclusive use of **Tenant** for the Initial Term or Renewal Term of this Lease:~~

- i. ~~Office and ticketing space at the Departure building to be used for customary and usual office and ticketing operations (the “Office Space”); as well as for general passenger support purposes;~~
- ii. ~~The interior of this structure is now unimproved; **Landlord’s** sole obligation shall be to provide electricity and water to the building, with **Tenant** responsible for any improvement it requires, as provided below.~~
- iii. ~~The approximate exterior dimensions of the Departure building are forty feet by forty feet, and its location is shown on Exhibit A.~~

a.b. Spaces for exclusive use at certain times. The following spaces are available for the Exclusive use of **Tenant** for the hours stated during the Operating Season:

- i. Queuing area. The sole area to be used for marshalling inbound and outbound vehicles, is the area labeled “Out Bound Queue” and “In Bound Queue” on Exhibit A, as may be modified to meet Customs and Border Protection requirements, and is to be used by **Tenant** on a non-exclusive but priority basis during the Operating Season to accommodate its sailing schedule, as outlined in Section 4. The Queuing area will be available to the **Tenant** for its exclusive use, however, only between the hours of ~~4:30~~5:00 P.M. and ~~9:30~~11:00 P.M., daily, and only during the Operating Season. The Queuing area may be reduced temporarily by mutual agreement of the **Tenant** and the City of Portland’s Director of Facilities Management or his/her designee (the “Director”). In addition, **Tenant** may place in the Queuing area any trailers or other facilities or improvements required by the U.S. Custom Border Protection service to be in or near such area, with the approval of the **Landlord** which may not be unreasonable withheld, and subject to regulatory approval by the Portland Planning Board and/or Planning Staff. With respect to the queuing of commercial trucks and all truck with a cab and articulating trailer (‘semi’s’): The **Tenant** will actively discourage the ~~the~~ queuing of such vehicles in the public ways of the **Landlord**. Before the beginning of the ~~first~~ Operating Season,

Tenant will provide **Landlord** with a written plan for queuing such vehicles, ~~including the contingency of such vehicles, while awaiting departure, being too numerous to be accommodated in the Outbound Queuing Area, and possibly~~ including the establishment of an off- site queuing area, with radio or telephone communication used to coordinate movement of such trucks to the Premises from that area.

ii. Berthing. In addition to the foregoing, berthing at the OG Terminal may be used by **Tenant** and the Vessel on a non-exclusive but priority basis during the Operating Season, based upon **Tenant**'s sailing schedule, as outlined in Section 4. During the Operating Season, the Berthing area will be available to the **Tenant** for its exclusive use between the hours of 6:307:00 P.M. and 9:3011:00 P.M., daily, except that when cruise ships are in port, then Vessel arrival time shall be 7 P.M., during the Operating Season. It will be **Tenant**'s responsibility to track scheduled cruise ship visits in order to ensure proper berthing time. In the event **Tenant** wants unscheduled berthing, a request for such berthing shall be made with as much advance notice as reasonably possible prior to the need for such berthing. **Landlord** shall make such berthing available to the extent it is reasonably available, subject to the provisions of Section 4 below. The **Landlord** reserves the right to assign a secondary berth to **Tenant** in the event of **Tenant**'s off-schedule berthing. **Tenant** shall be solely responsible for the cost of moving its vessel to off-schedule berthing, including but not limited to any security costs, and **Landlord** shall have no responsibility for such moving, security or related costs. Use of the Berthing area shall include the exclusive use of the "roll-on, roll-off" ramp facilities now existing at the OG Terminal (the "Ramp"), as is, for vehicle and passenger loading and unloading. **Tenant** shall have the exclusive Use of this ramp facility the Ramp during the Operating Season and for the two weeks immediately before and the two weeks immediately after the Operating Season. **Tenant**'s use of the Ramp is at **Tenant**'s sole risk. ~~**Tenant** agrees to have an appropriate engineering or other profession certify to **Landlord** as to the safety and acceptability of the interface of this ramp facility and the corresponding facilities on the Vessel, on or before April 15, 2014. **Landlord** is to certify that the ramp facility is constructed and maintained to the supplied drawings and specifications on execution of this Agreement. Upon request, **Landlord** will provide **Tenant** with any plan or schedule **Landlord** has for the maintenance of this ramp facility.~~ The approximate size and location of this above non-exclusive use space shall be as shown on Exhibit A.

iii. Terminal Building. **Tenant** will have the exclusive use of the ground floor of the Terminal Building at the OG Terminal between the hours of 5:00 P.M. and 9:00 P. M. daily, during the Operating Season, for the processing of passengers by Custom Border Protection, and related functions. The **Tenant** will 'staff' this area during this exclusive use time, and clean the area after each use, and secure (lock up) the area after each use, unless requested otherwise by **Landlord**'s employees.

be. Non-exclusive use space. The following spaces is available for the non-

exclusive use of **Tenant** during the Operating Season:

i. Receiving Building. Between the hours of 9:00 A.M. and 9:00 P. M. daily, during the Operating Season, the Receiving Building at the OG Terminal may be used by **Tenant** on a non-exclusive basis, in common with others, for ticketing, including the passenger waiting areas and rest rooms within the OG Receiving Building. During cruise ship operations at the OG Terminal, cruise ship passenger support will be a significant use within the Receiving building and surrounding vehicle circulation areas. **Tenant** will secure (lock up) the area after each use, unless requested otherwise by **Landlord**'s employees.

Use of the Receiving Building is provided "as is." Any changes to the building, either requested by the **Tenant** or required to facilitate the **Landlord**'s simultaneous use of the space for cruise ship operations, shall be implemented at the **Tenant**'s sole expense.

ii. Exterior areas. In addition to the foregoing, the walkways, driveways and roadways within the OG Terminal may be used by **Tenant** on a non-exclusive basis, in common with others. However, on any day on which another vessel (such as a cruise ship) or scheduled event will be using the OG Terminal, the **Tenant** and its passengers will only use the area ~~to the east of the Departure Building~~ for dropping off of customers and passengers; ticketing, and **Tenant** will co-operate with **Landlord** to adequately place personnel signage for incoming customers and passengers to be aware of this use restriction. No outboard queuing is allowed in Receiving parking lot. Queuing prior to 4:30 PM must occur east of Departure Building or within the outbound queuing lane.

iii. Portland Ocean Terminal. Use of eight hundred (800) square feet of storage space from January 1, 2015 to December 31, 2016.

cd. Parking. **Landlord** will make available to **Tenant** for its employees' parking up to 75 full-day parking spaces and up to 1540 additional parking spaces available only between 4:00 P.M. and 11:59 P.M., daily, in the City-owned Thames Street parking lot per Exhibit B fee schedule at a mutually agreeable cost and location, and during the Operating Season of each year of the term of this Lease or any renewal term. **Landlord** will assist the **Tenant** such that **Tenant** is able to direct customers of parking facilities within the City of Portland, including the nearby Ocean Gateway Garage, but **Landlord** ~~will~~ not provide any customer parking (other the Queuing area described above, to be used for queuing). Employee vehicles parked in the Receiving lot are subject to ticketing if parked beyond posted limits.

de. **Landlord** reserves the right to change particular locations of those portions of the Premises which are for non-exclusive use by **Tenant**, but subject to the condition that such re-location(s) will not unreasonably burden the operations of **Tenant**. The intent of this reserved right to re-locate is to allow **Landlord** to continue the ongoing development and enhanced utilization of its limited waterfront real estate, in coordination with other parties using nearby locations, or

desiring to make use of City owned property or nearby locations.

This Lease Agreement is non-exclusive, ~~except as provided for above for exclusive use~~ and nothing herein shall prevent or prohibit the **Landlord** from leasing other available space at either the Ocean Gateway or any other facility owned or operated by **Landlord**, to another **Tenant** for any purposes **Landlord** deems suitable, including but not limited to the operation of a similar ferry service. **Tenant's** use of the Queuing area and all other areas to be used by passengers is subject to any reduction in size or configuration or availability as may be required, at any time, by any security agencies having jurisdiction with respect to such areas.

2. **[intentionally omitted]**

3. **Term.**

a. ~~Initial~~ Term. Except as provided below, the ~~Initial~~ Term of this Lease shall be from ~~May~~ April 15, ~~2015~~ the "~~Effective Date~~") ~~2014~~ through October 31, 2016, with **Tenant** option to renew for two (2) additional two (2) year terms and then one (1) one (1) year term (the Renewal Term or Terms), subject to mutual agreement of the parties as to Rent and Fees. **Tenant** shall provide **Landlord** with notice no later than one full year before the then effective end date of the then term of this Lease, as to whether **Tenant** wishes to renew this Lease. If **Tenant** wishes to renew, the parties shall meet no later than within two months of such notice to negotiate renewal Rent and Fees. In the event the parties have not agreed on such Rent and Fees within four months after such notice, then this Lease will terminate effective on that then effective end date.

b. Operating season. **Tenant's** Operating Season shall be ~~June~~ May 1 to October ~~14~~ 31, annually (the "Operating Season"), which ~~Operating Season~~ may be enlarged or extended, upon a request from **Tenant**, after approval of the **Landlord** in its sole discretion. **Tenant** shall have the right to ~~exclusive occupancy of the portion of the Premises which is the Departure Building, and~~ non-exclusive use of the ~~remainder of the~~ Premises from two weeks before the beginning of the Operating Season, and two weeks after the end of the Operating Season of each year of the ~~Initial~~ Term of this Lease and any Renewal Term, for preparation and winding up, but subject to other uses the **Landlord** may make of all portions of the Premises, ~~but for the Departure Building.~~

4. **Permitted Uses.**

a. During the term of this Agreement, **Tenant** is permitted to use the Premises and related OG Facilities for the purpose of conducting the Service via the Vessel. **Tenant** reserves the right to change vessels providing the Service hereunder, (so long as such new vessel is of reasonably comparable quality and is functionally compatible with the then existing facilities at OG), subject to **Landlord's** approval which shall not be unreasonably withheld. **Tenant** shall pay all costs associated with accommodating any such change in, or addition to, such vessel(s).

- b. **Tenant** agrees to provide seven (7) days of service per week during the Operating Season, subject to normal exigencies of the ferry business, including weather and mechanical breakdown. Sailings shall be daily with arrivals at 6:30-7:00 p.m. except that when cruise ships are in port, vessel arrival time will be 7:00 p.m. and with departures by 10:00 p.m. Should **Tenant** wish to institute additional service, the parties will meet to review the issue of priority berthing and queuing availability for such additional or modified service schedule, and such additional service shall only be instituted with the written approval of the **Landlord**, and at **Landlord**'s sole discretion. Should **Tenant** wish to reduce its schedule of service, **Tenant** will provide as much notice as reasonably practicable and will provide best efforts to give notice at least sixty (60) days in advance.
- c. **Tenant** acknowledges that no trade or occupation shall be conducted on or from the OG Facilities or use made thereof that would be unlawful, improper, or offensive, or contrary to any law or any municipal by-law or ordinance.

5. Rent; Fees.

- a. **Tenant** shall pay Fees, when due, as provided on Exhibit B, attached hereto and incorporated herein.

b. Payment: Tenant shall make monthly rental payments for parking, berthing, and ground rent in advance on the 15th day of each month commencing May 15, 2015 and continuing until and including September 15, 2015, and for the 2016 season. The monthly rent for parking shall be \$1,225.00; the monthly rent for berthing shall be \$15,900.00; and the monthly ground rent shall be \$4,660 for a total monthly expense of \$21,785.

~~b. **Tenant** shall pay, for the use of the Departure Building, an annual amount as Rent of Nineteen Thousand Two Hundred Dollars (\$19,200.00) due and payable as specified in Section 6 (a), below.~~

~~c.e.~~ Overnight berthing may be provided upon **Tenant**'s request, if such berthing is reasonably available. In such case, the fee for such berthing shall be pursuant to Exhibit B.

~~d.e.d.~~ Upon execution of this Lease, **Tenant** agrees to pay **Landlord** a deposit in the amount of Ten Thousand (\$10,000.00) which deposit shall be forfeited in full to **Landlord** in the event of termination or default prior to one full season of operation by **Tenant**. After this first season of operation, this deposit shall be retained by **Landlord** as security deposit.

6. Payment; Statements.

~~a. Payment: Rent shall be paid in twelve equal monthly payments in advance beginning on April 1, 2014, and thereafter on the 1st day of each month of the term of this Lease and any renewals.~~

ab. ~~Other fees: Tenant shall pay~~ The per passenger fees, per vehicle fees, berthing and common area fees in Exhibit B ~~shall be paid,~~ without need for an invoice from Landlord, by the fifteenth (15th) day of each month for the calendar month immediately preceding such payment, accompanied by **Tenant's** statement as provided below. ~~All other Fees shall be paid within Thirty (30) days of receipt of an invoice from the Landlord.~~

bc. ~~All payments will be made in U.S. legal tender to the Landlord at the address herein. Tenant's right to occupy the Exclusive Use space and its Rent and Fee obligations under Paragraph a. above shall start on April 1, 2014; Fees due only during the Operating Season in Paragraph ab. above shall begin as of the first day of the month of said Operating Season. No additional rent shall be charged for insurance or operating expenses, unless otherwise provided for herein. Tenant shall be responsible for payment of personal property taxes which may be payable on their trade fixtures and equipment, and for payment of any federal, state or local fees or taxes which may apply to their operations hereunder.~~

cd. Late payment: **Tenant** shall make prompt and timely payment of all rentals, fees, and other charges due hereunder as the same may from time to time come due.
In the event that any such payment is not made within thirty (30) days of the invoice due date, a penalty of one percent (1-%) per month 12% per annum) shall be assessed and paid on all such amounts outstanding.

de. Address: All payments hereunder shall be written to the City of Portland and sent to the attention of: Public Assembly Facilities, Accounting Office, Portland Exposition Building, 239 Park Avenue, Director of Facilities Management, City of Portland, 389 Congress Street, Portland, Maine 04102~~1~~ or such other place as the Director may designate in writing from time to time.

Any invoices shall be sent to **Tenant** at the following address: Nova Star Cruises Limited, 30 Damascus Rd, Suite 201, Bedford NS, Canada B4A 0C1, Attn: Mark H. Amunden, President, or such other person or address as **Tenant** may designate in writing from time to time.

ef. **Tenant** statements: **Tenant** shall submit its official manifest or other official documentation (or electronic equivalent) showing the number of passengers, vehicles and buses/trucks (or other conveyances) transported by **Tenant** both to and from the City of Portland each month when it submits its per passenger, per vehicle and per bus/truck fees under Exhibit B. **Tenant** shall further provide **Landlord** with a statement as to monthly berthing when it submits its payment for the berthing.

fg. **Landlord** reserves the right to conduct an audit of **Tenant's** traffic records, upon reasonable notice and during regular business hours, to determine the accuracy of amounts paid hereunder. In the event such audit discloses an underpayment to **Landlord** of more than Five Percent (5%) in any year, **Tenant**

shall pay to **Landlord**, in addition to the amount owed and any applicable late charges, the reasonable cost to **Landlord** of its audit.

7. Condition of Premises; Improvements to Premises.

- a. “As is.” **Tenant** has had the full opportunity to inspect ~~the Exclusive Use space,~~ the berthing, queuing, parking and the common use space prior to execution of this Amended and Restated Lease Agreement and takes all such space, specifically including the ~~existing ‘roll-on-roll-off’ ramp~~Ramp, “as is”, except as specifically provided herein. Should **Tenant**’s Vessel require modifications of the ~~existing ‘roll-on-roll-off’ r~~Ramp, such modifications shall be solely at **Tenant**’s cost and expense, and subject to all required reviews and permits for such structure, including but not limited to approval of the Director which shall not be unreasonably withheld. Should **Tenant** change vessels and this results in the need for a new or modified ramp structure, gangway structure or other portions of the OG Facility from that provided as of May 1, ~~2015~~2014, such modified structure or facilities shall be provided solely at **Tenant**’s cost and expense, and subject to all required reviews and permits for such structure, including but not limited to approval of the Director which shall not be unreasonably withheld.
- b. In the event **Tenant** wishes to make improvements to the Premises, it shall obtain the written approval of **Landlord** prior to undertaking any such improvements, which approval shall not be unreasonably withheld, but all such improvements shall be at **Tenant**’s cost and expense.
- c. Notwithstanding the foregoing, **Landlord** agrees that **Tenant** may install, at **Tenant** expense, only at particular locations approved in advance by the Director, its security camera system in order to monitor the docking basin, vehicle inspection or processing booth and waiting areas for security and operational issues; subject to the condition, however, that **Tenant** will share access with the **Landlord** to the ‘live feed’ from such cameras, as well as any recordings from such cameras if and when requested.

8. Obligations of Landlord; Maintenance, Utilities.

Except as otherwise provided herein, the **Landlord** shall provide for the ‘landside’ facilities only, at its expense, the following:

- a. Heat and Ventilation to maintain the Receiving Building at a reasonable temperature and hot water at such hours and on such days as **Tenant** is using the Receiving Building, and electricity within the Receiving Building.
- ~~b. An Electrical connection to the Departure Building, with service to be sub-metered separately for, and paid for by the **Tenant**. **Tenant** shall have the right to use the Departure Building 24 hours per day, 7 days per week.~~

be. Except as otherwise provided in this Lease, **Tenant** acknowledges and agrees that this Lease is a 'net lease', for the **Landlord**, and that the **Landlord** shall not be responsible for any costs, charges, expenses or the like whatsoever arising from or related to the leased premises or rights, or the business carried on or related to said premises or rights, and **Tenant** shall pay all costs, charges, expenses or the like of every nature and kind whatsoever relating to the leased premises or rights, including any passenger or vehicle ramps, unless agreed to in advance in writing by **Landlord**.

cd. Water for ordinary drinking, cleaning, lavatory and toilet facilities and necessary for efficient, adequate and sanitary provision of services for the Receiving Building ~~and the Departure Building~~, and, at the Receiving Building only, **Landlord** will provide at its cost sewer service for the facilities located therein; **Landlord** will provide water (including potable water) to the Vessel, at the Rates in Exhibit B.

de. Maintenance and repair of the roof, exterior walls and structure of the Premises, (the marine infrastructure, i.e., the passenger bridge, security fencing, and fendering ~~and ramp~~ (except as provided in section 7.a. above), in the same condition as they are at the commencement of the term or as they may be put in during the term of this Agreement, reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance or repair is made necessary by fault or neglect of **Tenant** or the employees, contractors, agents or invitees of **Tenant**, in which case such maintenance or repair shall be at the expense of the **Tenant** and **Tenant** shall pay all costs therefor.

ef. Except during the Operating Season and the two weeks immediately before and the two weeks immediately after the Operating Season, the City shall provide routine maintenance of the Ramp. Two weeks prior to the Operating Season, **Landlord** shall turn over control of the Ramp to **Tenant** in good working order, reasonable wear and tear excepted.

f. Maintenance and reasonable cleaning of the common use areas, including washrooms, and the exterior grounds, all walkways and queuing and parking areas available for use by **Tenant**, its employees and invitees, including snow and ice removal.

9. **Obligations of Tenant.**

Tenant covenants that it will, at its expense:

- a. Pay when due, all Rent, Fees and other charges or assessments hereunder;
- b. Pay all costs associated with the ferry operation (except as otherwise stipulated herein), including but not limited to, office and ticketing staff, provision of all office and ticketing equipment, and direct Vessel costs including but not limited to fuel, water, electricity, stevedoring, screening and security staff, staff to direct and supervise vehicle traffic and queuing, trash removal and pilotage. **Tenant** shall be responsible for the repair, maintenance and cost of its own Vessel

fueling system subject to all applicable federal, state and local regulations.

- c. **Tenant** is hereby required to utilize stevedores licensed by the City for line handling, loading and unloading luggage and baggage and the like, and supervising and directing the loading and un-loading of all vehicles;

~~d. — Pay all utility periodic charges associated with the Departure Building, based upon a monthly invoice from **Landlord**, or from the utility itself if possible. To the extent reasonably available, sub-metering shall be used to determine such costs;~~

~~d.e.~~ Pay all expenses for all installation and periodic charges associated with communications systems, including but not limited to phone systems and services, computer systems and communication services, television and cable access, satellite services, and security and video equipment and services within the exclusive use areas and used, except as provided herein, solely by the **Tenant**;

~~d.ef.~~ Maintain the Premises in such repair as on the commencement of this Agreement, except only for reasonable wear and tear and damage caused by fire or other unavoidable casualty not the fault of **Tenant**, its employees, contractors, agents or invitees. ~~**Tenant** shall be responsible for furnishing and cleaning its Exclusive Use space.~~ **Tenant** shall not injure or deface the Premises or the OG Facilities nor permit anyone else to do so. **Tenant** agrees to report to **Landlord** promptly, but in any case within 24 hours of when it ~~it~~ knew or reasonably should have known of any substantial damage to the Premises or OG Facilities which poses any potential health or safety issue, including but not limited to any water damage or intrusion;

~~d.fg.~~ **Tenant** shall be solely responsible for all repairs and maintenance of the Ramp during the Operating Season and the two weeks immediately before and the two weeks immediately after the Operating Season. At the end of the two week period immediately after the Operating Season, **Tenant** shall return control of the Ramp to **Landlord** in good working order, reasonable wear and tear excepted. To the extent that **Landlord** is then required to make any repairs to the ramp resulting exclusively from **Tenant**'s use during the preceding Operating Season, or the two weeks before or after the Operating Season, **Tenant** shall reimburse **Landlord** for all related expenses. It being the intent that **Tenant** will be responsible for only those repairs to the ramp caused by **Tenant**'s use excepting normal wear and tear."

~~d.g.~~ Properly contain and dispose of all trash and garbage from its operations, including but not limited to all vessel trash and garbage, in containers suitable for pickup by **Tenant** or **Tenant**'s contractor. **Landlord** shall provide regular trash pickup for the common use areas of the OG Facilities only.

~~d.h.~~ ~~Provide cleaning of the exclusive use space on an as needed basis relating to **Tenant**'s activities. "Cleaning" shall mean dusting, vacuuming, sweeping, pest management, and trash removal and similar cleaning activities;~~

hg. **Tenant**, at **Tenant's** expense, to provide nightly cleaning of the common use space. Cleaning shall mean dusting, vacuuming, sweeping, and mopping all common space and similar cleaning activities. **Landlord** will provide one cleaning per day and will provide **Tenant** paper goods for restocking restrooms.

- i. Maintain in full force and effect the insurance coverage required in Section 15 below, and such fire and extended coverage or business interruption insurance for its own property or benefit as it may deem to be appropriate. **Tenant** shall hold its property, including fixtures, furniture, equipment and the like, or that of any other owner, on the Premises at **Tenant's** own risk;
- j. Notify the **Landlord** in advance of any proposed alterations to the Premises, including but not limited to posting of signage by **Tenant** at OG in accord with Section 11 herein. All such alterations are subject to the prior written approval of the Director, which approval shall not be unreasonably withheld;
- k. In addition to other payments required herein, **Tenant** shall pay and discharge punctually all generally applicable taxes and governmental assessments on any of **Tenant's** activities or property. The parties understand and agree that there are no real estate property taxes to be assessed against the Premises leased hereunder and chargeable to **Tenant**, but **Tenant** shall be responsible for payment of any personal property taxes which may be assessed. **Tenant** reserves the right to contest the imposition or amount of any such taxes or assessments by any means provided by law;
- l. Permit **Landlord** at reasonable times to inspect the Premises and to make, at its own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to said Premises or any part thereof, and during such operations to take into and through said Premises or any part of the Premises all materials required, **Landlord** agreeing, however, that it will carry out such work in a manner which will cause **Tenant** minimum inconvenience;
- m. Not permit any employee, agent, contractor or invitee of **Tenant** to violate any covenant or obligation of **Tenant** hereunder nor create a nuisance at the OG Facilities;
- n. Keep the Premises equipped with all safety appliances required by law or any public authority because of the use made by the **Tenant** of the Premises;
- o. Keep **Landlord** informed of any unavoidable changes to sailing times sufficiently in advance so that **Landlord** can accommodate its berthing needs, if possible; however, **Landlord** does not guarantee that any revised sailing times can be accommodated; but for such notice, **Landlord** may presume the Vessel will arrive at approximately ~~6:30~~7:00 P.M., except when cruise ships are in port, when vessel will arrive at 7:00 P.M., and depart at approximately 10:00 P.M. daily; a departure of more than one hour from this times shall require notice to

the **Landlord**; and

- p. Provide all security personnel, and any Custom Border Protection facilities, including utility connections and utilities services for the same, at **Tenant's** cost and expense, as may be required by, or for compliance with, Custom Border Protection or the Service with the United States Coast Guard operations, and such additional security personnel as may be deemed reasonably necessary by **Tenant**; and all such required facilities and improvements shall be property of **Landlord** at the end of the lease term.

Should any maintenance or repair of the OG Facilities or the systems serving the OG Facilities require repair or replacement as a result of the negligence or willful act of the **Tenant** or the **Tenant's** invitees, agents or contractors, **Tenant** shall be responsible for the timely repair or replacement of same. Any damage caused to the berthing, queuing, parking or common use areas, including but not limited to waiting areas, hallways, stairwells, and restrooms, caused by any of **Tenant's** employees, contractors, agents or invitees, shall be repaired by **Landlord**, and the cost of such repair shall be billed to **Tenant** at **Landlord's** cost, and shall be paid by **Tenant** as additional rent with the next due Rent payment; or, alternatively, taken from any security deposit being held by the **Landlord**, in which case the **Tenant** shall replenish that security deposit within ten (10) days of being informed in writing that this is necessary.

10. Certain Rights Reserved to the Landlord.

The **Landlord** reserves the following rights:

- a. To retain and use in appropriate instances keys to all doors within and into the Premises and to change the locks to the Premises if **Landlord** deems it advisable. No lock shall be changed by **Tenant** without the prior written consent of **Landlord**. **Landlord** shall have the right to access the utility rooms through **Tenant's** exclusive use space as reasonably necessary;
- b. On reasonable prior notice to **Tenant**, to exhibit the Premises to prospective **Tenants** or users of the OG Facilities and to others having a legitimate interest at any time during the term;
- c. To adopt reasonable rules and regulations relating to the OG Facilities from time to time during the Term; provided, however, such rules and regulations shall not materially interfere with **Tenant's** permitted use of the Premises. **Tenant** agrees to comply with reasonable rules and regulations from and after the fifteenth (15th) day after **Tenant's** receipt thereof;
- d. To remove from the Premises, at **Tenant's** expense, any alterations, additions, signs, awnings, or the like, not consented to in writing by the Director; and
- e. **Landlord** reserves the right to berth vessels of any type at the OG Facilities, subject to **Tenant's** rights under this Lease.

- f. **Landlord** reserves the right to use the OG Terminal and OG Facilities for functions and for functions (including but not limited to weddings) for third parties, subject to **Tenant**'s rights under this Lease.

11. Signage.

Tenant shall have the right to have signage on the Premises, including but not limited to outdoor signage, which signage shall be approved by the Director and shall be at **Tenant**'s sole cost. It is the intent of the parties to prominently promote **Tenant**'s ferry service. Installation of such signage may be done by the **Landlord**, or by the **Tenant** by a contractor acceptable to the **Landlord**, at **Tenant**'s cost. General signage for the common use Space, and the parking lot at the OG facility, shall be provided and installed by the **Landlord**, at **Landlord**'s cost. All signage shall be installed and maintained in accordance with all applicable local and state governmental codes. Subject to **Landlord**'s approval which shall not be unreasonably withheld, **Tenant** may, at its expense, place murals and/or photographs and/or graphics on walls of the common use space for promotion of its ferry service. **Tenant** shall restore all such space to its original condition at the termination or expiration of the Lease.

12. Compliance with Laws.

Tenant agrees to comply with all present and future laws, ordinances, orders, rules, regulations and requirements of the federal, state and local governments or any of their departments, bureaus, boards, commissions and officials thereof (collectively, the "Laws") with respect to the Premises, or the use or occupancy thereof, including without limitation, at **Tenant**'s cost, to alter, maintain or restore the Premises in compliance with all laws relating to the condition, use or occupancy of the Premises, whether said compliance shall be ordered or directed to or against **Landlord** or **Tenant**, or both. **Tenant** shall comply, at its sole cost and expense, with all Laws relating to (i) air emissions, (ii) water discharges, (iii) noise emissions, (iv) air, water or ground pollution, or (v) any other environmental or health matter (collectively, "Environmental Laws") during the Term in connection with its use and occupancy of the Premises and the OG Facilities. **Tenant** shall not be responsible for any compliance attributable to the obligations of **Landlord** hereunder nor to any event or act which occurred prior to the execution date or after the expiration date of this Lease Agreement, unless caused by the error or omission of **Tenant**, its officers, agents, employees, contractors or invitees, nor shall **Tenant** be responsible for the cost of any change to the OG Facilities required as a result of any changes in the requirements of laws related to accessibility by persons with disabilities.

13. Security Rules.

- a. **Tenant** shall comply with all safety and security requirements in its operations hereunder. **Tenant** further agrees that its officers, employees and agents shall abide by the provisions of the **Landlord**'s Federal Facility Security Plan, and with any other security directives or policies that may be promulgated from time to time by the **Landlord**, the State of Maine or by agencies of the Federal Government during the term of this Agreement. The **Landlord** agrees to provide

Tenant with copies of the relevant portions of **Landlord's** Plan to permit **Tenant** to comply with its terms.

- b. **Tenant** shall comply with the lawful directions of the City's Facility Security Officer's directions and commands, with respect to its operations at the OG Terminal and berthing area. **Tenant** shall designate a particular person, who must be readily available, as its Security Contact Person, for the purposes of emergency and other communications to, from and with the City's Facility Security Officer.
- c. **Tenant** shall, to the extent required by law or any agency with jurisdiction, prepare and file its own Facility Security Plan, which shall then become an amendment to **Landlord's** Facility Security Plan, for **Tenant's** operations and its use of **Landlord's** Facilities, and provide a copy of such Plan and amendment to the **Landlord**.
- d. Transportation Workers Identification Credential Requirement: All persons requiring unescorted access to the secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105, and 106 of 33 CFR (Code of Federal Regulations) must, to the extent required by law and applicable authorities, possess a TWIC (Transportation Workers Identification Credential) before such access will be granted. A TWIC must be obtained via the procedures established by TSA (Transportation Security Administration) in 49 CFR part 1572.
- e. In addition, **Tenant** employees working at the OG Facilities shall have **Landlord-** approved identification badges displayed at all times when at the OG Facilities, whether within the Premises or the common use space.
- f. **Tenant** shall pay all costs and expenses for additional security, required as determined by the **Landlord** in its sole discretion, due to **Tenant's** failure to adequately provide security (whether required by third parties or not) at **Landlord's** OG Facilities.
- g. In addition, **Tenant** shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, which may arise directly out of **Tenant's** failure to comply with the covenants of this paragraph, and such failure shall be deemed a default under this Agreement. **Tenant** shall be responsible for obtaining all necessary permits and licenses required for its use and occupancy of the OG Facilities at its own cost and expense.
- h. As provided in Section 9(p) above, **Tenant** will pay all costs related to required Security facilities.

14. Indemnification.

- a. General. To the fullest extent permitted by law, **Tenant** shall at its own expense defend, indemnify, and hold harmless the **Landlord**, its officers, agents, and employees, from and against any and all liability, claims, damages, penalties,

losses, expenses, including costs of investigation and attorneys fees, or judgments, just or unjust, arising from injury or death to any person, or damage to, or loss of use of, property sustained by anyone (including but not limited to **Landlord's** employees or property) and arising, in whole or in part, out of **Tenant's** use, activities at or on, or occupancy of the OG Facilities, except that such obligation of indemnification shall not include indemnification for claims to the extent such claim is caused by (i) the negligent acts or omissions of **Landlord**, its officers, agents, employees or contractors, or (ii) a breach by **Landlord** of its obligations under this Lease. **Tenant** shall include **Tenant**, its officers, agents, employees, contractors, subcontractors (including Atlantic Fleet Services Corporation) and/or invitees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against **Landlord** or in which **Landlord** may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which **Landlord** is a party, **Landlord** shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of **Landlord**. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to **Landlord** which would otherwise exist.

- b. Covenant against liens: **Tenant** shall not cause nor permit any lien against the **Landlord's** property or any improvements thereto to arise out of or accrue from any action or use thereof by **Tenant** and shall hold the **Landlord** harmless therefrom; provided, however, that **Tenant** may in good faith contest the validity of any alleged lien. Upon request of the **Landlord**, **Tenant** shall post a bond warranting payment of any such lien, or provide other security acceptable to **Landlord**, in the event **Tenant** contests such lien.
- c. Survival. The Terms of this Section shall expressly survive the expiration or termination of this Agreement.

15. **Insurance.**

- a. Amounts. Without expense to the **Landlord**, and with no lapse in coverage, **Tenant** shall procure and maintain, at its own cost, and show evidence to the **Landlord** of the following insurance to protect the **Landlord** from claims and damages which may arise from **Tenant's** operations under this Agreement, whether such operations shall be performed by the **Tenant** or by anyone directly or indirectly employed by it, including without limitation Atlantic Fleet Services Corporation, in the types and minimum amounts set forth below:

<u>Description</u>	<u>Coverage</u>	<u>Each Occurrence</u>
(i) Commercial General Liability, including Broad Form Property Damage	B.I./P.D./ Death	\$5,000,000

(ii) Vehicle Liability, including owned, hired or non-owned	B.I./P.D./Death	\$2,000,000
(iii) Workers' Compensation, including U.S. Longshoremen and Harbor Workers' Coverage, as applicable	B.I./Death	Statutory
(iv) Protection & Indemnity insurance \$5,000,000 including Federal Maritime and Jones Act Coverage		
(v) Pollution coverage Land to Sea/Land to Land		\$5,000,000
(vi) Employer's Liability B.I./P.D. including U.S. Longshoremen & Harbor Workers, as applicable		\$1,000,000

b. **Landlord** protected. The **Landlord** shall be named as an additional insured under items (i) and (ii) above. Item (iii) shall include a waiver of subrogation against **Landlord**. To the extent that **Tenant** has any employees who are not covered by the Longshoremen & Harbor Workers, Federal Maritime and Jones Act coverages, **Tenant** shall provide evidence of Workers Compensation coverage in the statutory amounts, including a waiver of subrogation against **Landlord**.

c. Notice to **Landlord**. All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine. Each such policy shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the **Landlord**. Each liability policy required to be obtained hereunder shall be on an occurrence basis. In the event that policies are not available on an occurrence basis, **Tenant** shall purchase a "tail" which provides coverage hereunder for a minimum of six (6) years after termination of this Agreement.

All policies required hereunder shall be primary to any insurance or self-insurance which **Landlord** may maintain for its own benefit. Liability insurance coverage shall also extend to damage, destruction, and injury to **Landlord**-owned or **Landlord**-leased property and **Landlord** personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of **Tenant**, its officers, agents, employees, invitees, and/or contractors.

d. Certificates. Certificates or other evidence of insurance coverages required of **Tenant** in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the **Landlord** prior to use of the Premises. Such certificate or certificates shall at all times while this Lease Agreement is in effect provide **Landlord** with at least thirty (30) days

prior written notice of any change or modification in insurance coverage or insurance carrier.

- e. **Tenant** Property Insurance. **Tenant** shall procure and maintain, at its option and election, such all risks fire and casualty insurance covering its property on the Premises as it deems necessary.
- f. **Landlord** reserves the right to require a commercially reasonable increase in the minimum insurance limits hereunder at the commencement of any Renewal Term of this Lease.

16. [Intentionally omitted]

17. **Assignment/Subletting.**

- a. By **Tenant**. **Tenant** shall not sublease, transfer or assign this Agreement or the rights granted hereunder at any time during the Term of this Agreement without the prior written approval of **Landlord**, which may be granted or withheld in **Landlord**'s discretion; except, however, **Tenant** may, if required by written agreement between **Tenant** and the Province of Nova Scotia, assign this Agreement and the rights granted hereunder to the Province of Nova Scotia in the event the **Tenant** is itself unable to continue operating the Service, and which case the Province of Nova Scotia will assume all of the obligations of **Tenants** herein, as well as the rights of **Tenant** herein. No such assignment or subletting shall relieve **Tenant** of any obligations hereunder and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefor in the same manner as **Tenant**.

Tenant shall have the right to assign all of its rights, obligations and interests under this Agreement to any successor to its business through merger, consolidation, reorganization or sale of all of its assets and the consent of the **Landlord** thereto shall not be required. In such cases, **Tenant** shall provide **Landlord** with prompt written notice of any such assignment.

- b. By **Landlord**. **Landlord** reserves the right to assign this Lease to a quasi municipal or State entity, provided, however, that in such event such entity shall agree to assume all of the terms and obligations of the **Landlord** under this Lease. **Landlord** shall not assign this Lease to a private party without the prior written approval of **Tenant**, which may be granted or withheld in **Tenant**'s discretion.

18. **Casualty Damage.**

- a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part

thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Premises shall have been put in proper condition for use by **Tenant**; provided, however, in the event of such destruction or damage, either **Landlord** or **Tenant** shall have the right to terminate this Lease by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Agreement shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to **Tenant**.

- b. **Landlord** and **Tenant** each hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the OG Facilities or to the property of either party, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. **Landlord** and **Tenant** shall each be responsible for maintaining such casualty insurance on its property as it deems necessary and such policies shall waive any right of subrogation thereunder against the other party.

19. Default.

- a. Either party may terminate this Agreement upon no less than Thirty (30) calendar days' prior written notice for failure of the non-terminating party to

comply with the terms and conditions of this Agreement. In such event, the non-terminating party shall have the right to cure such default within the Thirty (30) day period, or in the case of default in any payment due hereunder, within Ten (10) calendar days of receipt of notice of such default. If a default is of such a nature that it cannot reasonably be cured within 30 days, the non-defaulting party shall permit a reasonable period to cure so long as the party in default proceeds diligently to cure such default. Such notice of default shall not be required to coincide with a rental period.

- b. Any suspension of operation of the vessel in excess of ten (10) consecutive days during the sailing season, for reasons other than major mechanical failure of the Vessel, shall, at **Landlord's** option, be deemed to be a default and termination of this Lease. For purposes of this subsection, a sailing season begins on the earlier of May 1 or the first trip of the vessel, and terminates on October 31.

During any period of suspension, **Tenant** shall continue to be liable for any rent or utility payments for its exclusive use space only, unless **Landlord** notifies **Tenant** that **Landlord** wishes to utilize the ticket counter during the suspension period, and such use is not disruptive to **Tenant**, in which case, the rent shall be ratably reduced.

- c. Upon termination of this Lease, **Tenant** shall quit and surrender to **Landlord** the Premises in accordance with the provisions of Section 20 hereof. In no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of this Agreement or termination of this Agreement. And upon termination of this Lease, the parties shall have no further obligation to one another, except those obligations which arose prior to termination of the Lease or which explicitly survive termination of the Lease hereunder.

20. Return of Premises; Holding Over.

- a. At the expiration or termination of this Lease, **Tenant** shall ensure that all vessels with which it is in any way affiliated are removed from the OG and all City of Portland berthing areas, and will also promptly quit and surrender the Premises to **Landlord** broom clean and in good order and condition, ordinary wear excepted, and free from debris, trash and waste, and shall cease its operations from the OG Facilities. **Tenant** shall, if and only if so requested by **Landlord**, remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises or OG Facilities; provided, however, all damage caused by or as a result of such removal shall be repaired by **Tenant** at its expense. All trade fixtures, equipment, furniture, furnishings and personal effects not removed by **Tenant** within thirty (30) days after expiration or termination of this Lease shall, at **Landlord's** option, be deemed to have been conveyed to **Landlord** in fee title, and may be appropriated, sold, stored, destroyed or otherwise disposed of by **Landlord** without obligation

to account therefor or, at **Landlord's** option, **Landlord** can have such trade fixtures and items removed and the cost of any such removal and the expense of any repair necessitated by such removal shall be borne by **Tenant**.

- b. If **Tenant** or any party claiming through or under **Tenant** shall remain or continue to be in possession of the Premises or any part thereof after the termination of the Lease or any renewal thereof, without **Landlord's** consent, then, at **Landlord's** option, **Tenant** or such party or both shall be deemed to be illegally retaining possession or, at **Landlord's** option, shall be deemed to be a month-to-month **Tenant** of the Premises and subject to all the terms and conditions of this Lease except that the monthly rent hereunder shall be One Hundred and Fifty Percent (150%) of the Rent payable during the month prior to such termination. This Section shall not be construed as giving **Tenant** any right to hold over after the expiration of the Term or to limit **Landlord's** rights to obtain possession of the Premises upon termination by any lawful means available to **Landlord** if **Landlord** does not elect to treat the continued possession by **Tenant** or any party claiming through or under **Tenant** as a month-to-month tenancy.
- c. **Landlord** lawfully may upon termination of this Lease Agreement, enter into and upon the said Premises or any part thereof in the name of the whole, and repossess the same as of its former estate, and expel **Tenant** by any lawful means and those claiming through or under **Tenant**, and remove its or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant.

21. **Quiet Enjoyment.**

So long as **Tenant** shall observe and perform the covenants and agreements binding on it hereunder, **Tenant** shall at all times during the term herein granted peacefully and quietly have and enjoy possession of the Premises without any encumbrance or hindrance by, from or through the **Landlord**.

22. **Notices.**

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent:

To Tenant :	Mark H. Amunden, President Nova Star Cruises Limited Nova Star Cruises, Ltd 131 Sandy Run Hammond Plains, Nova Scotia B4B - 1X9 Canada
--------------------	--

With a copy to: D. Kelley Young
Troubh Heisler
P.O. Box 9711
511 Congress Street
Portland, ME 04104-5011

To **Landlord**: Sheila Hill-Christian~~Mark H. Rees~~, Acting City Manager
389 Congress Street
Portland, Maine 04101

With a copy to: Director of Facilities Management
389 Congress Street
Portland, Maine 04101

23. Amendment: Authority.

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

Each party warrants that this Lease Agreement has been signed by a representative duly authorized to bind that party to this Lease Agreement.

24. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. **Tenant** warrants to **Landlord** that it is licensed to do business in the State of Maine and has an agent authorized to accept service of process in said State. **Tenant** shall provide such information upon request to **Landlord**.

25. Force Majeure.

Neither **Tenant** nor **Landlord** shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and the party prevented from performance has given written notice thereof to the other party.

26. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the **Landlord** or **Tenant** shall be deemed to imply or constitute a waiver of any succeeding or

other breach hereunder.

27. Brokers.

Landlord and **Tenant** each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Agreement. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim.

28. Transition Provision.

Prior to the Effective Date, the rights and obligations of Landlord and Tenant are those described in the Existing Lease. On the Effective Date, the Existing Lease shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

WITNESS:

**NOVA STAR CRUISES
LIMITED**

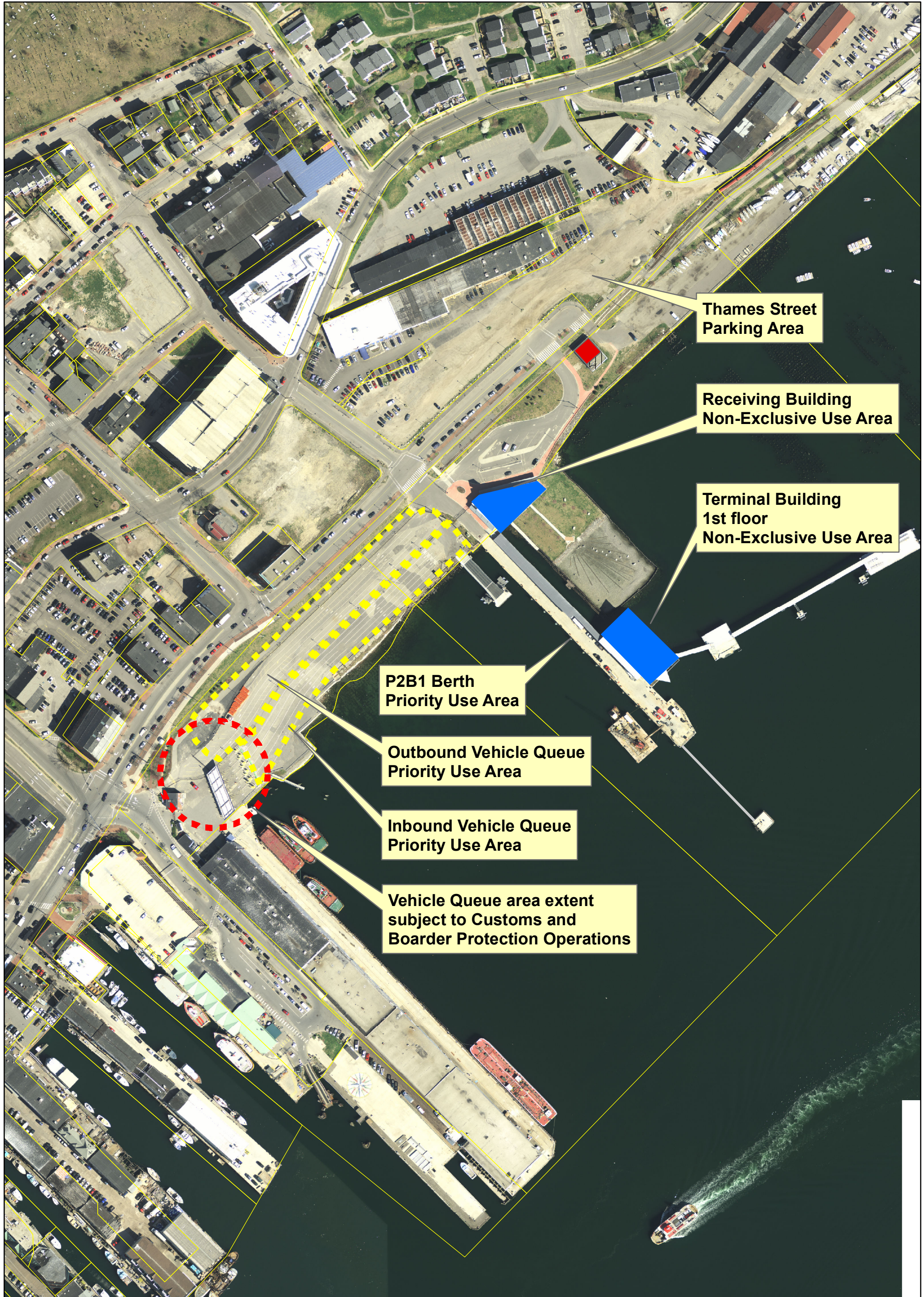
By: _____
Mark H. Amundsen
Its President and CEO

CITY OF PORTLAND

By: _____
~~Sheila Hill-Christian~~ Mark H. Rees
Its Acting City Manager

AMENDED EXHIBIT A

DIAGRAM OF PREMISES
AND OCEAN GATEWAY TERMINAL



**Thames Street
Parking Area**

**Receiving Building
Non-Exclusive Use Area**

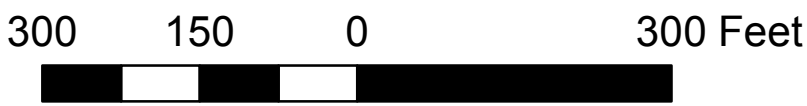
**Terminal Building
1st floor
Non-Exclusive Use Area**

**P2B1 Berth
Priority Use Area**

**Outbound Vehicle Queue
Priority Use Area**

**Inbound Vehicle Queue
Priority Use Area**

**Vehicle Queue area extent
subject to Customs and
Border Protection Operations**



**Ocean Gateway Site and Facilities
Nova Star Cruises Limited Lease
Exhibit A**

April 2015, Amended and Restated Lease

EXHIBIT B

Fuel License, per season	\$100.00
Berthing	\$350 per day during 1st year; 2nd year: \$ 1.00 per foot of overall vessel length, per day
Common Area Fee-Receiving Building, <u>And Portland Ocean Terminal storage,</u> per month day	\$3,160 25.00
Common Area Fee-Terminal Ground Level, per month day	\$1,500 50.00
Subtotal:	<u>\$4,660.00</u>
<u>Parking</u>	
<u>Full Time Parking (7 Spaces @ \$100/space/month</u>	<u>\$ 700.00</u>
<u>Part-time Parking (15 spaces) @ \$35/space/month</u>	<u>\$ 525.00</u>
Subtotal:	<u>\$1,225.00</u>
Fresh Water, per metric ton	\$ 4.00
Security Badges, each	\$ 2.50
Security Badges, replacement, each	\$ 25.00

The following fees are upon each arrival and each departure:

Passengers	\$ 2.50
Bicycles	\$.50
Motorcycles	\$.75
Automobiles	\$ 3.00/1st year, \$5.00/ 2nd year.
Passenger Vehicle with Camper/Utility Trailer	\$ 3.00 /1st year, \$5.00/ 2nd year.
Recreational Vehicles/Motor Homes	\$ 3.00
Tour Busses/Motor Coaches	\$ 20.00
Commercial Trucks (without articulating trailer)	\$ 20.00/1st year, \$25/ 2nd year.
Commercial 'Trailer Trucks': Cab with Articulating Trailer	\$ 20.00/1st year, \$25/ 2nd year.