

Order 182-17/18

Passage: 8-0 (Strimling absent) on 4/9/2018

Effective 4/19/2018

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

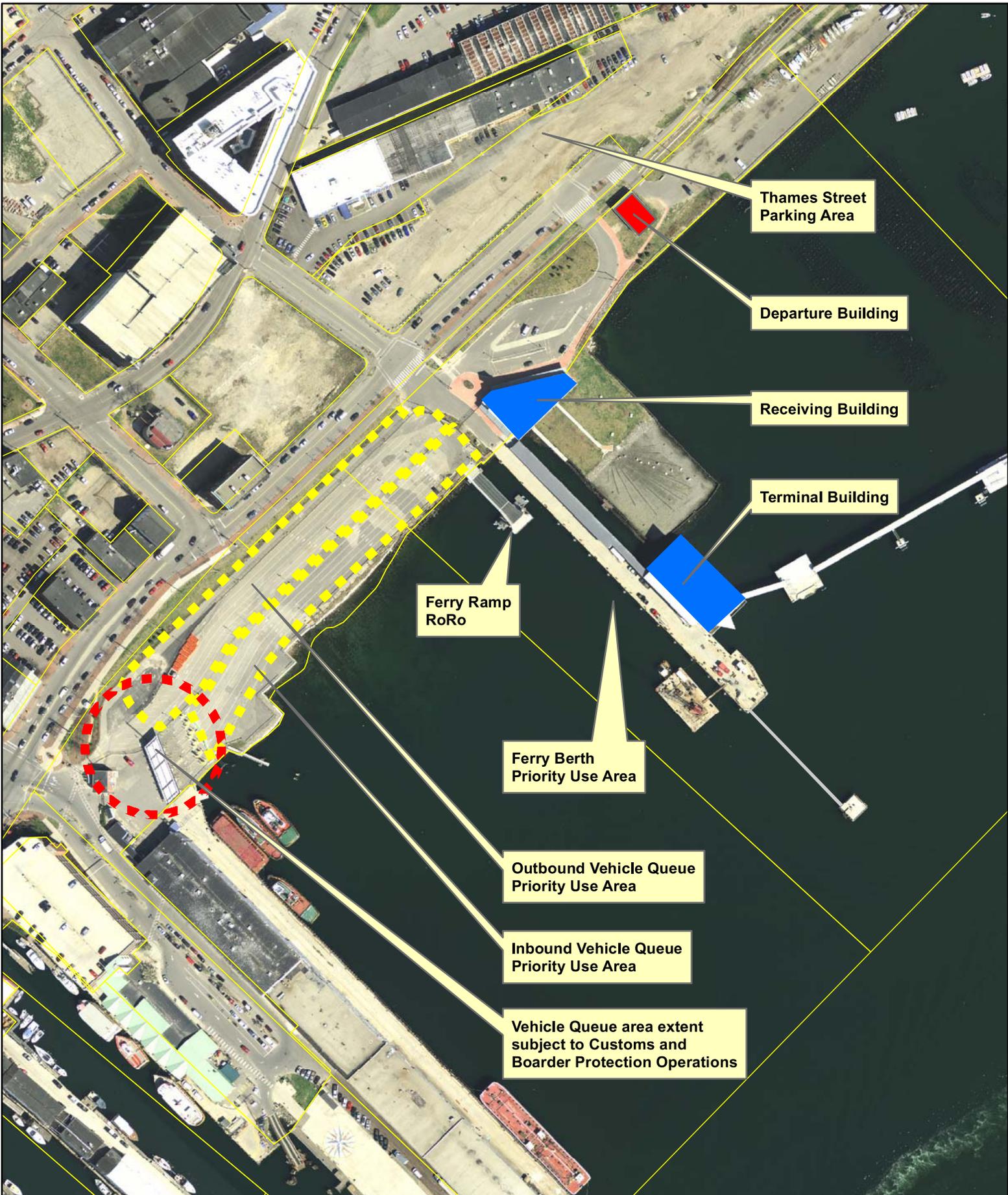
CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE THIRD AMENDMENT TO THE
AMENDED AND RESTATED LEASE
WITH BAY FERRIES LIMITED
FOR OCEAN GATEWAY FACILITY**

ORDERED, that the attached Third Amendment to the Amended and Restated lease with Bay Ferries Limited for Portland to Yarmouth, Nova Scotia ferry service from the Ocean Gateway facility is hereby approved, substantially in the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document.



Thames Street
Parking Area

Departure Building

Receiving Building

Terminal Building

Ferry Ramp
RoRo

Ferry 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

250 125 0 250 Feet



Ocean Gateway Site and Facilities
Bay Ferries, Limited
Lease Exhibit A

April 2016

4 of 40

THIRD AMENDMENT TO
AMENDED AND RESTATED LEASE AGREEMENT BETWEEN
CITY OF PORTLAND AND BAY FERRIES LIMITED RE: OCEAN GATEWAY

THIS THIRD AMENDMENT is made as of the ____ day of _____, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (“Landlord”) and BAY FERRIES LIMITED, a Canadian registered corporation with a principal office at 94 Water Street, Charlottetown, Prince Edward Island, Canada C1A 7L3 (the “Tenant”).

WITNESSETH:

WHEREAS, Landlord and Tenant entered into an Amended and Restated Lease Agreement dated May 26, 2017, as amended by a First Amendment dated August 28, 2017, and a Second Amendment dated October 13, 2017 (collectively, the “Lease”) with respect to certain space at Landlord’s property known as Ocean Gateway, where Tenant operates an international ferry service between Portland, Maine and Yarmouth, Nova Scotia; and

WHEREAS, Landlord and Tenant wish to renew the Lease for the 2018 Operating Season subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Section 1(c) of the Lease, Parking, is hereby deleted in its entirety and replaced with the following: “There shall be no parking included in this Lease.”

2. Section 2(a) of the Lease is hereby deleted and replaced with the following:

“Term. The Term of this Lease shall be from the date set forth above to November 15, 2018. Provided that Landlord, in its sole discretion, determines that Tenant is not in default of any term or condition of this Lease, Landlord may agree to renew this Lease for up to one additional year upon terms mutually agreeable to the parties. If Tenant desires to so renew this Lease, Tenant shall notify Landlord on or before October 15, 2018.

3. Section 2(b) of the Lease is hereby deleted and replaced with the following:

“Operating Season; Wind Up and Wind Down Seasons; Off Season. Tenant’s Operating Season shall be June 8, 2018 to October 8, 2018 (the “Operating Season”). The term “Wind Up Season” shall mean June 5-7, 2018. The term “Wind Down Season” shall be October 9-12, 2018, or the three (3) day period following the Operating Season if the Operating Season terminates before October 8, 2018. Tenant shall have no right to occupy, and shall vacate, the Queuing Area, the Berthing Area, the Ramp, the Exterior Common Areas, the Terminal Building, and any other City-owned property, other than the Departure Building, after October 21, 2018. Tenant shall vacate the Departure Building and surrender possession of it to the

Landlord in accordance with the terms of the Lease on or before November 15, 2018. The term "Off Season" shall mean from the date first set forth above until June 4, 2108. In the event that Landlord agrees to renew this Lease as set forth above, the term "Off Season" shall also mean the period between the end of the 2018 Wind Down Season and commencement of the 2019 Wind Up Season"

4. Section 5(b) is hereby deleted in its entirety and replaced with the following:

"In the event Tenant wishes to make any improvements to any portion of the Premises, including any improvements required by CBP, it shall obtain the written approval of Landlord prior to undertaking any such improvements, which approval shall not be unreasonably withheld. All such improvements shall be at Tenant's sole cost and expense."

5. The following language is added to the Lease as section 7(t):

"On or before May 1, 2018, Tenant shall present Landlord with a licensed engineer's plan ("Plan") satisfactory to the City's Waterfront Manager, to mitigate future damage to the Seawall or any other part of the City's property which shall include installation of riprap by Cross Excavation at the quoted cost of \$15,698. Prior to the commencement of the 2018 Operating Season, Tenant shall complete construction of any required facilities described in said Plan, up to a maximum expenditure cap of \$20,000 (inclusive of the \$15,698 referred to above), to the Waterfront Manager's satisfaction. Compliance with this paragraph shall not relieve Tenant of any responsibility otherwise existing for any damage to, or its obligation to maintain or repair, the Premises or other City property."

6. The following is added to the Lease as section 28:

28. USCBP 2018 Security Equipment Requirements: U.S. Customs and Border Protection ("CBP") requires that a series of equipment and operational changes (the "CBP Requirements") be made to the Premises as a prerequisite to CBP providing inspection services for the 2018 Operating Season. The details and exact terms of the CBP Requirements are being discussed on an ongoing basis between CBP, the Tenant, and the Landlord. The parties acknowledge and agree that without such inspection services, Tenant cannot operate its ferry service. Accordingly, notwithstanding anything to the contrary in the Lease, in the event that CBP, at any time, decides to terminate its international inspection services for Tenant's ferry service, the Lease shall automatically terminate. Within 5 days after the date of CBP's decision to terminate such inspection services, Tenant shall vacate the Queuing Area, the Berthing Area, the Ramp, the Exterior Common Areas, the Terminal Building, and any other City-owned property, other than the Departure Building; and within 30 days after CBP's decision to terminate the inspection services, Tenant shall vacate the Departure Building and all other portions of the Premises not previously vacated.

Tenant acknowledges and agrees that it shall be solely responsible for all of the costs associated with the CBP Requirements, including, without limitation, all costs associated with the initial

assessments undertaken by third party contractors, all costs associated with the purchase and installation of equipment required by CBP, and all other costs associated with complying with, and maintaining, any CBP Requirements for approval of the Premises for Tenant's operation of its international ferry service (the "CBP Improvements Costs"). It is the intent of the parties that the Landlord shall incur no expense in connection with obtaining CBP's approval of the Premises for Tenant's operation of its international ferry service and maintaining that approval during the term of the Lease, and the Landlord shall not be responsible for any portion of the CBP Improvements Costs.

It is understood that the contracts for the most significant elements of the CBP Improvements (the "CBP Improvement Contracts") may be entered into with Battelle Memorial Institute, Pacific Northwest Division, UNISYS, or other contractors (collectively the "CBP Contractors"). If permitted by the CBP Contractors, Tenant will enter into any CBP Improvement Contracts with the CBP Contractors. The CBP Improvement Contracts shall be subject to the Landlord's approval, but Landlord shall not be liable for any expenses, costs, losses, damages, or claims incurred under such contracts. Should it become necessary that Landlord, as owner of the Premises, be a party to any CBP Improvement Contracts, the Landlord's execution of such contracts shall be conditioned upon Tenant first paying to Landlord all amounts due to the contractors under such contracts, or, at Landlord's option, providing some other financial security in form and amount satisfactory to Landlord, acting reasonably, which is reflective of Landlord's financial exposure pursuant to the terms of the CBP Improvement Contract(s). Notwithstanding the foregoing, in the event that Landlord incurs any costs related to the CPB Requirements, Tenant shall pay Landlord for such costs within five days of Landlord's demand for same, failing which the Lease shall automatically terminate.

Provided that Tenant has paid for all costs associated with the CBP Requirements as set forth herein, Landlord will not assert any ownership or other interest in any goods or equipment installed pursuant to or as a result of the CBP Requirements. Landlord will not object to any subsequent removal of any such goods or equipment to another location upon termination of this Lease.

Tenant further agrees that to the fullest extent permitted by law, it shall defend, indemnify, and hold harmless Landlord, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from the performance of any and all CBP Improvement Contracts, provided that any such claims, damage, loss damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use therefrom. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Landlord that otherwise exists. The extent of the indemnification provision shall not be limited by the provision for insurance in Lease. Tenant's obligations under this paragraph shall survive termination of the Lease.

7. The following language in Exhibit B attached to the Lease is hereby deleted: “Daily Parking per space, per month \$75.00.”
8. Exhibit D (2017 CAT Schedule) attached to the Lease is hereby deleted in its entirety and replaced with Amended Exhibit D (2018 CAT Schedule), which is attached hereto and made a part hereof.
9. Any and all terms of the Lease not herein amended shall remain in full force and effect for the duration of the Lease as amended hereby and are hereby ratified. In the event of any conflict between the terms of this Amendment and the terms of the Lease and any exhibits thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect. Except as amended hereby, any capitalized terms herein shall have the meanings set forth in the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

CITY OF PORTLAND

By: _____
 Jon P. Jennings
 Its City Manager

WITNESS:

BAY FERRIES LIMITED

By: _____
 Mark MacDonald
 Its: Chairman and CEO

 Approved as to Form:
 City Corporation Counsel's Office

 Approved as to Funds:
 City Finance Director

AMENDED EXHIBIT D



Tentative CAT Ferry Operating Schedule 2018*

www.ferries.ca/TheCAT

| Departure Times | | | | | | |
|--|--|--|--|--|--|--|
| Yarmouth, NS: 8:30 AM (Atlantic) | | | | | | |
| Portland, ME: 2:30 PM (Eastern) | | | | | | |
| (Atlantic Time is one hour ahead of Eastern Time) | | | | | | |
| Passengers must check in 1-1.5 hours before departure. | | | | | | |
| Passports are required for entry to Canada and USA. | | | | | | |

| JUNE | | | | | | |
|------|----|----|----|----|----|----|
| Su | Mo | Tu | We | Th | Fr | Sa |
| 27 | 28 | 29 | 30 | 31 | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

| JULY | | | | | | |
|------|----|----|----|----|----|----|
| Su | Mo | Tu | We | Th | Fr | Sa |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |

| AUGUST | | | | | | |
|--------|----|----|----|----|----|----|
| Su | Mo | Tu | We | Th | Fr | Sa |
| 29 | 30 | 31 | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |

| SEPTEMBER | | | | | | |
|-----------|----|----|----|----|----|----|
| Su | Mo | Tu | We | Th | Fr | Sa |
| 26 | 27 | 28 | 29 | 30 | 31 | 1 |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 1 | 2 | 3 | 4 | 5 | 6 |

| OCTOBER | | | | | | |
|---------|----|----|----|----|----|----|
| Su | Mo | Tu | We | Th | Fr | Sa |
| 30 | 1 | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 | 1 | 2 | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |

Service Dates are shaded in the calendars above. Non-service dates are white.