

MEMORANDUM OF UNDERSTANDING
FOR TEMPORARY LICENSE TO USE BOAT

This Memorandum of Understanding (the "Agreement") regarding the temporary use of a Boat is made as of the 17th day of March, 2020, by and between the Massachusetts Environmental Police, an office within the Commonwealth of Massachusetts' Executive Office of Energy and Environmental Affairs and having an address of 251 Causeway Street, Boston, Massachusetts 02114 (the "MEP"), and the Town of Tisbury, Massachusetts, having an address of 51 Spring Street, P.O. Box 1239 Vineyard Haven, MA 02568 ("Licensee").

Whereas, Licensee wishes to borrow one (1) 25 foot Parker Boat, HIN number PXMLS033D999, together with all equipment and the appurtenances affixed thereto (collectively, the "Boat"), in the possession of the MEP for Licensee's law enforcement purposes, including patrol, search and rescue, enforcement, and to assist disabled boaters; and

Whereas, the MEP wishes to allow Licensee to use the Boat for such purposes subject to the terms and conditions of this Agreement.

Now therefore, in consideration of the stated promises, intending to be legally bound hereby, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the MEP and Licensee hereby agree as follows.

1. **Grant of License.** MEP hereby grants to Licensee a temporary license to use the Boat during the License Term only for non-commercial boating, search and rescue, and law enforcement purposes (the "License").

2. **Term of License.** The License shall be for the period (the "License Term") commencing on March 20, 2020 (the "Commencement Date") and terminating on September 30, 2020 or within 30 days of the Town of Tisbury's receipt of a new patrol vessel (the "Termination Date"), whichever occurs sooner. The parties may extend the term of the Agreement, in writing, within 45 days before the Termination Date.

3. **Fee for License.** There shall be no fee payable by Licensee to MEP for the grant of the License.

4. **Delivery and Transportation.** MEP will make the Boat available to Licensee at 9:00 A.M. on the Commencement Date for Licensee to pick up at MEP facilities located at Massachusetts Environmental Police Coastal Enforcement Bureau Headquarters, 30 Shipyard Drive, Bldg. 45, Hingham, MA 02043. Licensee shall return the Boat to MEP at such facilities in the same condition in which the Boat originally existed prior to Licensee picking up the Boat, reasonable use and wear excepted, and otherwise in good condition by 4:00 P.M. on the Termination Date. All transportation of the Boat, including but not limited to all preparation, loading and unloading of the Boat and related vehicles, shall be the sole responsibility of Licensee at Licensee's sole expense. The Boat shall be transported by Licensee in a manner reasonably satisfactory to the MEP.

5. **Use of Boat.** During the License Term and for any such longer time after the termination of the License Term that any Licensee Parties shall have care or custody of the Boat,

Licensee shall cause Licensee and all Licensee's employees, agents, contractors and invitees (collectively, the "Licensee Parties"):

- (a) to use the Boat only for law enforcement purposes, including patrol, search and rescue, enforcement, and to assist disabled boaters;
- (b) to use the Boat in a reasonably safe and responsible manner;
- (c) to take reasonable precautions to protect the Boat from fire, theft, damage, weather events, mishandling, dirt, vermin and pests;
- (d) to provide MEP with a list of personnel who will operate the vessel;
- (e) to prohibit any persons from consuming or providing alcohol while operating, aboard or using the Boat;
- (f) to notify the MEP immediately, and in no event more than twelve hours after any such damage may occur, of any damage that occurs to the Boat or if Licensee anticipates that any damage to the Boat may occur; and
- (g) to comply with all applicable laws, codes, regulations, orders, ordinances, permits, approvals and other legal requirements, as the same may be amended from time to time (collectively, the "Legal Requirements").

6. No Modification of Boat. Licensee shall not alter, improve, repair or restore the Boat in any manner without the express written permission of MEP in each instance.

7. No Warranties or Representations by MEP. Licensee accepts use of the Boat in its current condition "as is," "where is" and with all faults. MEP has not made, does not make and hereby disclaims all warranties, representations, promises, agreements and guaranties of any kind whatsoever, whether express or implied, oral or written, past, present or future concerning the Boat, including but not limited to: (a) the nature, quality or condition of the Boat, (b) the manner, quality, state of repair or lack of repair of the Boat, (c) the suitability or fitness of the Boat for any activities, uses or purposes, and (d) the compliance of the Boat with any Legal Requirements. Licensee agrees that MEP has made no warranties, representations, promises, agreements or guaranties regarding the Boat and that none, if any, shall be valid or binding upon MEP unless expressly set forth in this Agreement. Licensee, for itself and all its successors and assigns, further agrees that Licensee has had or will have had before the Boat is used by any Licensee Parties the full opportunity to inspect the Boat and will rely solely on its own investigations of the Boat and not on any statements or information provided or to be provided by the MEP.

8. Insurance. Licensee agrees to purchase from insurers qualified to do business in the Commonwealth of Massachusetts (the "Commonwealth") and maintain insurance policies during the License Term and for any such longer time after the License Term that Licensee or its agents shall have care or custody of the Boat as follows:

- (a) Standard Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence and a minimum of not less than \$1,000,000 in the

aggregate for any bodily injury, including death, pollution and/or property damage and loss arising from the use or transport of the Boat by Licensee or any Licensee Parties or any negligent act or omission by Licensee or any Licensee Parties;

(b) Insurance policy with a limit of not less than \$1,000,000 per occurrence for any damage or loss relating to the hull and machinery;

(c) Workers' Compensation Insurance as required by law.

Before Licensee or any Licensee Parties take custody of, transport or use the Boat, Licensee shall provide to MEP copies of valid Certificates of Insurance for the above policies in a form reasonably acceptable to MEP that name Licensee as the insured and MEP as the additional insured under such insurance policies for such amounts.

9. **Indemnification.** (a) Licensee shall assume all risk in connection with any and all activities that it engages in with the Boat and/or at MEP property, including but not limited to the loading, transport and unloading of the Boat, and release or threat of release of oil or hazardous materials into the environment, and shall be solely responsible and answerable in damages and any other equitable remedies for all accidents or injuries to all persons or property caused by Licensee's activities. Licensee shall at no time be considered an agent or representative of the MEP or the Commonwealth. The MEP and Commonwealth shall not be liable for any costs incurred by Licensee arising under the License or this Agreement.

(b) Licensee shall be responsible for the protection of its own assets and property and those of the MEP in or on the Boat. MEP shall not be responsible for property of Licensee or of Licensee's contractors, agents, representatives, employees, guests and invitees.

(c) Licensee shall be responsible for its actions and the actions of its contractors, agents, representatives, employees, Licensees, guests, and invitees. To the extent permitted by law, Licensee shall indemnify, defend and hold the Commonwealth, including but not limited to the MEP, its agents, officers, and employees, harmless from and against any and all injuries, losses, claims, actions, damages, liabilities, costs or expenses, including without limitation attorneys' fees and costs and release or threat of release of oil or hazardous materials into the environment (collectively, "claims") to the extent such claims arise out of any act, failure to act or use by Licensee, its contractors, agents, representatives, employees, licensees, guests and invitees of the Boat or the premises where the Boat may be located, unless said claims arise solely out of or are solely the result of the gross negligence or willful, wanton, or reckless conduct of the MEP or its employees.

(d) Licensee further expressly agrees not to make any claims against the Commonwealth or MEP for any injury, loss, or damage to persons, including bodily injury or death, or damage to property or in connection with compliance with any existing law arising out of the use of the Boat by Licensee, its contractors, agents, representatives, employees, Licensees, guests and invitees, unless said claim solely arises out of or is the result of the willful, wanton, or reckless conduct of the MEP and its employees.

(e) The indemnification obligations set forth in this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages,

compensation, or benefits payable by or for Licensee, its officers, employees, representatives, agents, contractors, subcontractors, servants, licensees, and invitees, or by any other person acting for or by permission of Licensee. MEP shall have the right to review and approve how any claims against MEP in relation to this Agreement are defended, including settlement thereof.

(f) The obligations of Licensee under this Section 9 shall survive the revocation, expiration or termination of the License or this Agreement with respect to claims which arose prior to such revocation, expiration or termination.

10. No Assignment. Licensee shall not assign, sell, transfer or license to any third party the Boat, the License or this Agreement.

11. Termination. The License shall be a true license, personal to Licensee. In no event shall this Agreement or any use of the Boat be deemed to create, vest, grant or give rise to any property right to Licensee or any other party. MEP may terminate the License and this Agreement without cause upon notice to Licensee.

12. Authorized Execution by Licensee. Licensee and the undersigned officer of Licensee warrant and represent to MEP that (a) Licensee and the undersigned officer have the full power and authority to execute and legally bind Licensee to this Agreement; and (b) Licensee has read and understands all the provisions of this Agreement after having had fair and adequate opportunity to read and understand this Agreement and to consult with counsel of its choice with regard to this Agreement.

13. Other Laws and Regulations. No provision of this Agreement or any use of the Boat shall waive, bar, diminish, modify or in any way affect: (a) any obligations of Licensee or Licensee Parties to comply with any applicable Legal Requirements or other contractual obligations, (b) any power or authority of MEP to regulate or issue any order with respect to any property under the care or custody of MEP, or (c) any limitations on liability afforded to the Commonwealth, the MEP, Licensee or their respective agents, officers and employees, including but not limited to any limitations afforded by G.L. c. 21, § 17C or G.L. c. 258.

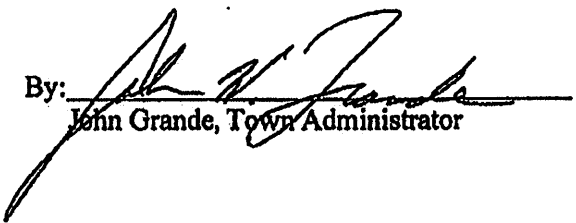
14. General Provisions. This Agreement shall be governed by and interpreted under the laws of the Commonwealth. This Agreement shall be binding on all parties and their respective successors and assigns. This Agreement reflects the entire agreement of the parties with respect to the matters contained herein. This Agreement shall only be modified by a written amendment executed by the MEP and Licensee. If any provision or condition of this Agreement shall be deemed invalid or unenforceable by any court with jurisdiction, then the remaining provisions and conditions shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. This Agreement shall not be deemed effective until executed and delivered by MEP and Licensee.

[Remainder of page intentionally left blank. Signature(s) follow on next page(s).]

EXECUTED under seal as of the 17th day of March, 2020.

Town of Tisbury, Massachusetts

By:


John Grande, Town Administrator

Massachusetts Environmental Police

By:


Shaun Santos, Director

