

TEMPORARY REVOCABLE LICENSE  
FOR  
CONSTRUCTION  
In Gilman Street

This revocable license, dated as of \_\_\_\_\_, 2021, is granted by the City of Portland (hereinafter, the "City") to MaineHealth d/b/a Maine Medical Center, a Maine non-profit corporation having a mailing address of 110 Free Street, Portland, Maine 04101 (hereinafter, the "Licensee,") to allow Licensee to perform certain maintenance and improvements on and adjacent to portions of land owned by the City of Portland ("City" or "Licensor") on Gilman Street, which property abuts the property of Licensee, located at the corner of Gilman and Congress Streets for the purpose of facilitating the development of Licensee's Property as outlined in a Site Plan approval issued by the Portland Planning Board on December 17, 2018. The area to be utilized by Licensee under this Agreement (the "License Area") is as depicted as "Proposed Temporary Construction License Area" on attached **Exhibit A**, which is a copy of the plan entitled 'Soldier Pile and Lagging Wall at Gilman and Congress Streets' prepared by Earthwork Engineering, Inc. , dated January 7, 2021 (the "Plan"). Temporary use and occupancy of the License Area by Licensee is subject to the following conditions:

1. Subject to the conditions outlined herein, Licensee is hereby permitted to bring upon the License Area workers, materials, and machinery necessary to complete the work contemplated in the Temporary Excavation Support Design Package, including plans prepared by Earthwork Engineering, Inc. Said plans are attached hereto as **Exhibit B** and contemplate the following work within the License Area: Installation of a temporary support of excavation system to facilitate the construction of the proposed hospital expansion building approved by the City of Portland Planning Board;
2. All work performed upon and use of the License Area shall be in accordance with:
  - **Exhibit B;**
  - The recommendations contained in that certain "Geotechnical Engineering Review of Gilman Street Temporary Support of Excavation Design" dated January 21, 2021 and issued by R.W. Gillespie & Associates, Inc., a copy of which is attached hereto and incorporated herein as **Exhibit C;**
  - Each of the "Technical Review Source Documents" referenced in **Exhibit C**, as those documents may be amended from time to time.
  - The response to recommendations contained in "Response to RW Gillespie & Associates Review of Gilman St. Temporary Support of Excavation Design Letter dated 1/21/21," prepared by Turner Construction Company and dated February 10, 2021, a copy of which is incorporated herein as **Exhibit D;**

- Any additional or supplemental standards or requirements as developed by and agreed upon by the parties during the term of this Agreement in response to conditions in the field.

3. All work performed upon and use of the License Area for the purposes set forth herein shall be at Licensee's sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the City's property adjacent to the License Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore to the City's satisfaction any portion of the License Areas and adjacent City property affected by work conducted by Licensee under this License to substantially the same condition that it was in prior to such work or as close to that condition as is reasonably practicable. LICENSEE acknowledges and agrees that its obligation to repair, replace, and restore all aspects of the City Property under this paragraph shall survive the termination of this License.

4. Indemnification: To the fullest extent permitted by law, Licensee shall defend, indemnify and hold the City, its officers, agents and employees, harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments, just or unjust, that arise out of or are caused by any act or omission of Licensee, its partners or members, agents, contractors, subcontractors, or employees, which claims arise out of or result from the activities hereunder, said claims to include, without being limited to, claims for personal injury, death, or property damage, including injury or damage to City employees or property; and claims based upon violation of any environmental law or regulation governing hazardous substances. Damages covered include, but are not limited to, all dispute resolution costs, including court costs, attorney's fees, engineers, consultants, arbitrators and other professionals related to dispute or litigation. Licensee's obligations under this paragraph shall survive the termination of this License.

5. Insurance. Prior to the execution of this Agreement, the Licensee will procure and maintain:

- Occurrence based Commercial General Liability Insurance coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage. Coverage shall also include damage due to explosives, collapse and underground coverage if such exposures exist;
- Occurrence-based Automobile Liability Insurance coverage for all autos, in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage;
- Workers' Compensation Insurance coverage to the extent required by law, which shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees;

- Pollution Liability Insurance coverage, including remediation, shall be covered if such exposures exist. Licensee is responsible for managing and insuring as it deems appropriate.

With respect to the Automobile, Commercial General Liability, and Pollution Insurance, the Licensee shall name the City as an additional insured for coverage only in those areas where government immunity has been expressly waived, including, without limitation, as set forth in 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the City under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City. Prior to execution of this Agreement, the Licensee shall furnish the City and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the City of termination of insurance from the insurance provider or agent. Licensee shall also provide a copy of any endorsement naming the City as additional insured. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. Upon City's request, Licensee shall provide City with a complete copy of any of the above-referenced policies. Licensee shall be responsible for any and all deductibles and/or self-insured retentions (self-insured retentions not to exceed \$10,000.00 without prior written approval of Corporation Counsel). City's acceptance or lack of acceptance of Licensee's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the Licensee's obligation to obtain and maintain such insurance as required by this agreement.

6. Release. Licensee hereby releases the City and its officers, agents and personnel (collectively, the "Releasees") from any and all claims, liabilities, damages, losses, costs, fees and expenses arising out of or resulting, directly or indirectly, from Licensee's use of any City property, including, without limitation, injuries, losses and damages for bodily injury (including disability or death) and property damage, regardless of cause, including any and all claims, damages and liabilities that arise out of or result from any actions or omissions, including negligence, on the part of any of the Releasees. Licensee promises not to sue any of the Releasees with respect to any such claims or liabilities. This waiver and release is intended to be as broad as the law allows and shall survive termination of this agreement.

7. Licensee shall install the temporary support of excavation system in accordance with all approved plans and shall be solely responsible for restoring the License Area to the satisfaction of the City.

8. This instrument is a License and no provision hereof shall be construed as conveying an easement or other estate in land. This instrument shall be null and void if recorded in the Registry of Deeds.

9. This license shall expire twelve (12) months from the date first written above or on completion by Grantee of work contemplated herein and approval by the City of the sufficiency of all work performed in the Licensed Area, whichever comes first. This License may be revoked upon 30 days' written notice by the City for any reason, including its convenience.

10. This License shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this License or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court.

11. This License may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

12. Licensee warrants and represents that it has the full right and authority to enter into this License, that there is no impediment that would inhibit its ability to perform their respective obligations under this License, and that the person signing this License on behalf of Licensee has the authority to do so.

**CITY OF PORTLAND**

By: \_\_\_\_\_  
Brendan O'Connell  
Its Director of Finance

STATE OF MAINE  
CUMBERLAND, ss.

Dated \_\_\_\_\_

Personally appeared the above-named Brendan O'Connell, Finance Director for the City of Portland and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

Seen and Agreed to by:

\_\_\_\_\_

\_\_\_\_\_  
By:  
Its:

STATE OF MAINE  
CUMBERLAND, ss.

Dated: \_\_\_\_\_

Personally appeared the above-named \_\_\_\_\_ for \_\_\_\_\_, as aforesaid, and acknowledged the foregoing instrument to be his/her/their free act and deed in his/her/their said capacity and the free act and deed of said \_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

EXHIBIT A

Insert License Plan

EXHIBIT B

Insert Site Plan