Reviewed for Code Compliance
Inspections Division
Approved with Conditions
Date: 07/12/13

OPERATING AGREEMENT FOR MAINE STATE PIER
CRAFT BEER COMES TO PORTLAND 2013

THIS AGREEMENT made this __15th__ day of __April___, by and betv

OF PORTLAND, a body politic and corporate situated in the County of Cumberland, State of Maine (hereinafter "**CITY**") and **MAINE BREWERS' GUILD** a Maine non-profit corporation, having a place of business in Portland, Maine (hereinafter **MAINE BREWERS' GUILD**), for the use of the Maine State Pier and other venues, all as more particularly described in the "Order Declaring **Craft Beer Comes to Portland 2013** Festival and Approving Contract and Permits Therefor," enacted by vote of the City Council of the City of Portland on April 15, 2013. A copy of the Order is attached hereto as Exhibit A.

In consideration of their mutual covenants, promises, and agreements, and other good and valuable consideration, receipt of which is hereby acknowledged, the aforesaid parties agree as follows:

DEFINITIONS

City means City Manager and includes his designated representative(s).

Event means the activities described in Exhibit A, and which are also referred to herein as "Festival."

Maine State Pier includes the area of the pier from the Fore River to the Portland Pier as well as the parking/roadway area serving the Casco Bay Ferry Terminal.

Premises means the Maine State Pier, as described herein.

USE OF PREMISES

1. **Term. MAINE BREWERS' GUILD** may use the Premises only on the days and during the periods set forth herein:

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a. **MAINE BREWERS' GUILD** will have use of the Maine
8:00 a.m. on Saturday, July 13, through 11:59 p.m. Saturda
Beer Tasting with vendors, food and music to be held fr
Saturday July 13, 2013 until 4:00 p.m. Saturday July 13, 2
opening at 12:00 p.m.

b. Temporary tables or stands for the Event may be erected. Booths and tables must be set up so that they will not interfere with access to the rest of the pier. Wheel chair access and sidewalk access shall be clear at all times. The adequacy of other walkways on the Premises shall be approved by the Police and Fire Departments.

c. All tents, tables or stands located on the Premises will be anchored by use of weights (e.g. sand bags, jersey barriers). No drilling of holes is permitted for any purpose on the Premises.

d. A Beverage Services area for sales of alcoholic beverages shall be permitted and shall be limited as depicted in Exhibit B. Alcoholic beverages may not be removed from the defined Beverage Services area and admission to the Beverage Services area shall be restricted to individuals 21 and over. **CITY** staff shall check i.d.'s and provide wrist bands to individuals for access to the Beverage Services area. **CITY** staff shall secure all sides of the Beverage Services area, to prohibit both unauthorized access to and the removal of beverages from this area.

e. Any other alterations to the Maine State Pier must receive the prior written approval of the Director of Public Buildings.

2. **Parking.** No vendor or spectator vehicles shall be allowed to park on the Pier. Deliveries shall be limited to no more than two (2) trucks less than 20 feet in length at any time (hereinafter "small truck"). In no event shall any small truck be parked on the Pier for more than fifteen (15) minutes. All other parking shall be accomplished off the Pier. Vendors' vehicles shall not interfere at any time with access to the Ready Seafood loading area or to the car ferry loading area.

3. **Portable Toilets.** **MAINE BREWERS' GUILD** shall be responsible for providing a minimum of four (4) regular and one handicap accessible portable toilets. All portable toilets shall be located in a position designated by **CITY** staff.

4. **Restrictions on Use.** **MAINE BREWERS' GUILD** hereby agrees to observe the following restrictions on the use of the Pier:

a. Any and all public announcement (PA) and other speakers or amplifiers used to amplify music or other sound shall be maintained at a reasonable level. PA Speakers for the festival shall be placed facing north and be configured by **MAINE BREWERS' GUILD's** contractor and the City to focus volume on the pier and its immediate environment.

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b. Arrangements for access to the pier and use of utility connect the responsibility of **MAINE BREWERS' GUILD. MAINE BREW** will make arrangements for such activities through the office of A Director of Public Assembly Facilities Division (207) 874 – 8200.
c. Public admission to the Festival on the Pier shall be limited t of attendees approved by the Portland Fire Department.
d. **CITY** shall supply all required security at the level deemed required by the **CITY**. The **CITY** reserves the right to increase amounts for security at any time, i.e. City of Portland Police, Fire (Firefighters and Firefighter/Paramedics) personnel, if he/she deems it necessary to protect public safety. **MAINE BREWERS' GUILD** agrees to pay for the cost of any required coverage on the Pier by PAF, Police or Fire staff at the **CITY**'s applicable rates.
e. **MAINE BREWERS' GUILD** shall not stage or promote any act or performance in which pyrotechnics, explosives or display of open flames are involved or used.
f. **MAINE BREWERS' GUILD** agrees to maintain all aisles and exits at all times and to order that any item be moved from an aisle or an exit per request of the **CITY**. **MAINE BREWERS' GUILD** shall not render, or allow any of its exhibitors, contractors, agents, invitees or other persons it permits on the premises to render, the Maine State Pier or any part thereof inaccessible to disabled persons. In the event that **MAINE BREWERS' GUILD** or any of its exhibitors, contractors, agents, invitees or other persons it permits on the premises render the Maine State Pier or any part thereof inaccessible to disabled persons, **MAINE BREWERS' GUILD** shall immediately remove the cause and return the Maine State Pier to compliance. In the event that the **CITY** is requested to provide interpretive services, it shall be the responsibility of the **MAINE BREWERS' GUILD** to provide and pay for such services. **MAINE BREWERS' GUILD** shall pay and hold the **CITY** harmless from any and all damages, loss, or liability of any kind whatsoever resulting from its actions, or those of its exhibitors, contractors, agents, invitees or other persons it permits on the premises, in rendering the Maine State Pier or any part thereof inaccessible to disabled persons. **CITY** staff reserves the right to enter all areas of the pier at any time for any reason.

g. The **CITY** reserves the right to close any event to the public, including to ticket holders, at any time to protect public safety to address overcrowding in aisles, exits or entrances or turnstile/ticket counts in excess of the total number of tickets authorized prior to the event.

5. **Existing Conditions/Alterations.** Except as specifically provided below, **MAINE BREWERS' GUILD** agrees to accept the Pier and the other Premises in their existing condition at the time of commencement for use and occupancy. It further agrees that no representations, statements, or warranties, express or implied, have been made by or on behalf of **CITY** in respect thereto, except as contained in the provisions of this Agreement. The **CITY** shall in no event be liable for any latent defects of the Pier or the other Premises, unless the **CITY** has actual knowledge of the defect and has failed to disclose such information to **MAINE BREWERS' GUILD**.

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6. The **CITY** shall have no responsibility whatsoever for si modification, set-up, removal or security of event equipment at any time. **MAIN GUILD** shall be responsible for removal of all equipment and for site cleanup a Event. Any equipment or material left after 12:00 noon on the day following the July 14, 2013) will become the property of the **CITY**, and may be removed anc **CITY's** discretion. In such an event, all costs of removal and/or disposition incurred by the **CITY** shall be added to the **CITY's** clean up costs. Said costs shall be billed to **MAINE BREWERS' GUILD** following the Event.

6.1 No alcoholic beverages shall be sold or served on the streets or other public property. The sale and consumption of alcoholic beverages will be permitted only in the Beverage Service Area on the Pier as depicted on Exhibit B.

6.2 The sale and consumption of alcoholic beverages shall be limited to the hours 12:00 p.m. Saturday July 13, 2013 to 4:00 p.m. Saturday July 13, 2013.

6.3 Sales at the Festival shall be limited to clothing items, food and beverages, including alcoholic beverages. The parties may mutually agree to expand the types of items that may be sold at the Festival. The **CITY** will charge a twenty percent (20%) (Non-profit rate) merchandising fee on gross sales for all goods sold specific to the artist and/or event, including, but not limited to: recordings, posters, t-shirts, banners, programs, pictures, etc. No merchandising fee shall be due on the sale of food and beverages, including alcoholic beverages. If **MAINE BREWERS' GUILD** provides merchandising labor, the merchandising fee is reduced to ten percent (10%) (Non-profit rate) on gross sales, and the **CITY**, at any time, shall have the right to make such inspection of merchandise, accounts, records and reports of **MAINE BREWERS' GUILD** or its subcontractor responsible for merchandise sales, as **CITY** deems necessary. **MAINE BREWERS' GUILD** agrees to make all such information available. The permission to sell any such items must be granted by the **CITY**. The amounts assessed shall be due and payable prior to the end time of rental.

6.4 No person shall be denied admission to any of the Events on the basis of race, color, creed, national origin, sex, disability or sexual orientation.

6.5 **MAINE BREWERS' GUILD** agrees to comply with all applicable federal, state and local laws in its use of the Premises, including but not limited to, all applicable fire and life safety codes. **MAINE BREWERS' GUILD** agrees to consult with City's Fire Chief prior to any operations under this Agreement to determine fire safety requirements.

6.6 **MAINE BREWERS' GUILD** agrees to return all the Premises to the **CITY** in the same condition in which they were received; and, further, **MAINE BREWERS' GUILD** agrees it will remain responsible for all reasonable costs of clean up associated with the Event, including any costs which may be incurred by the **CITY.**

7. **Concessions/Licenses.** **MAINE BREWERS' GUILD** shall be responsible for ensuring that all vendors at the Festival have complied with appropriate license requirements, including food service, sale of alcohol and concert licenses.

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FEES, CHARGES AND OTHER FINANCIAL OBLIGATION

8. **Fees.** The rental fee for the use of the Maine State Pier as provic be Six Hundred Seventy Five Dollars ($675.00). **MAINE BREWERS' GI** invoiced and make payment for, in advance of the event, both the Rental Fee and all **CITY** services, including but not limited to Recreation and Facilities Management, Police, Fire, and Parking, based upon the **CITY's** initial estimate for such services ($2,360.00 including the $675.00 Rental Fee). Any deductions or additional charges will be adjusted within five (5) days of the event, with any additional payment required due within thirty (30) days of the event.

8.1 **MAINE BREWERS' GUILD** agrees to pay interest at the rate of one and one-half percent (1 ½%) per month on any payment which is not made within the time limits set forth in this Agreement.

8.2 **Noise control; deposit**. **MAINE BREWERS' GUILD** agrees to deposit with **CITY** by bank check the sum of One Thousand Dollars ($1,000). In the event **CITY** receives 3 or more independent noise complaints from Portland residents based on loud music, and **MAINE BREWERS' GUILD** is so notified by the **CITY's** Police Department and fails to reduce the volume of music, as evidenced by **CITY** receiving additional noise complaints, **MAINE BREWERS' GUILD** shall forfeit the One Thousand Dollar ($1,000) check to the **CITY. CITY** shall return the One Thousand Dollar ($1,000) check if it receives less than three (3) independent noise complaints based on loud music or, **MAINE BREWERS' GUILD** responds adequately to the complaints by reducing the music volume. **MAINE BREWERS' GUILD** further agrees that nothing in this paragraph relieves it of its obligation under paragraph 6 to reduce the volume of music on request of the Police Department regardless of the number of noise complaints received by the **CITY** and that nothing in this paragraph prevents the **CITY** from seeking additional penalties for violations of its noise ordinances.

9. **Insurance.** **MAINE BREWERS' GUILD** shall procure and maintain commercial general liability insurance, contractual and products liability insurance, insuring both itself and the **CITY** during the time that it has rights under this Agreement against liability for claims arising out of the activities hereunder, including One Million Dollars ($1,000,000) combined single limit commercial general liability including contractual liability and Two Million Dollars ($2,000,000) aggregate.

Establishments providing liquor shall provide liquor liability insurance, naming **CITY** as additional insured. A copy of the certificate of insurance shall be provided to **CITY.**

9.1. The **CITY** shall be named as an additional insured in all such policies and all insurance provided by **MAINE BREWERS' GUILD** shall be primary to any insurance the **CITY** may have.

9.2. **MAINE BREWERS' GUILD** will provide evidence of workers' compensation insurance, to the extent required by Maine Law, in the event that it will have any employees working on any of the Premises.

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9.3. **MAINE BREWERS' GUILD** will furnish certificates of insur that it has provided the coverage required herein a minimum of seven (7) days p time of rental. **CITY** shall immediately refuse continued rental of the Maine cancel the event if **MAINE BREWERS' GUILD** does not purchase the required the certificate of insurance is not received a minimum of seven (7) days prior to t rental.

9.4. All certificates of insurance shall provide that they may not be canceled without thirty (30) days prior written notice to the **CITY.**

9.5. All insurance required by this Agreement shall be placed with insurers licensed to do business in the State of Maine and acceptable to the **CITY**, such acceptance not to be unreasonably withheld.

9.6. **MAINE BREWERS' GUILD** agrees to waive subrogation rights against **CITY.**

9.7. In the event **MAINE BREWERS' GUILD** provides the insurance required herein by means of a claims made, rather than an occurrence policy, the insurer shall provide the **CITY** with the retro date of the policy (which may not be later than the first day **MAINE BREWERS' GUILD** commences use of the Premises), as well as an "extended reporting period endorsement" which shall extend the time within which claims may be submitted to a period ending six years from the last date of use of the Premises by **MAINE BREWERS' GUILD.**

9.8 **MAINE BREWERS' GUILD** shall be responsible for all work performed by its subcontractors or anyone hired or employed by **MAINE BREWERS' GUILD** to perform services or provide supplies related to the event. All subcontractors of **MAINE BREWERS' GUILD** shall provide public liability insurance in an amount of not less than One Million Dollars ($1,000,000) combined single limit for bodily injury and general liability and Four Hundred Thousand Dollars ($400,000) property damage per incident, naming the City of Portland as an additional insured from such claims, and worker's compensation insurance. A copy of the certificate of insurance must be on file at the **ADMINISTRATIVE OFFICES OF THE PUBLIC ASSEMBLY FACILITIES DIVISION**. The certificate must provide thirty (30) days written notice to the **CITY** of termination of insurance from the insurance company or agent. The **CITY** shall prohibit the **MAINE BREWERS' GUILD** subcontractor access to the **FACILITY** if the certificate is not on file.

10. **Indemnification**. To the fullest extent permitted by law, **MAINE BREWERS' GUILD** shall, at its own expense, defend, indemnify, and hold harmless the **CITY**, its officers, and employees, from and against any and all claims, damages, penalties, loses, expenses or judgments, whether just or unjust, arising from injury or death to any person, property, or environmental damage, either arising out of or resulting from its activities under this Agreement or resulting from any act or omission of **MAINE BREWERS' GUILD**, its officers, agents, invitees, servants or employees, except to the extent that such injury, death, property or environmental damage results from the negligent act of the **CITY**, its officers, agents and employees. **MAINE BREWERS' GUILD** will, at its own costs and expense, defend any and all such suits, actions, or claims, whether just or unjust, which may be brought against the **CITY**,

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its officers, agents, and employees, or in which it or they may be impleaded wit obligation of indemnity and defense shall not be construed to negate nor abridge of indemnification or contribution which may benefit either **MAINE BREWEF** the **CITY.**

11. **Other Financial Obligations.**

11.1. **MAINE BREWERS' GUILD** shall be responsible for payment of any State or Federal taxes, or any other governmental assessment which may be made in connection with the Event.

11.2. **MAINE BREWERS' GUILD** acknowledges and agrees that it will be solely responsible for all royalties or charges which are due or may become due on material used for or during the event. **MAINE BREWERS' GUILD** warrants to the **CITY** that such royalties or charges have been paid or will be paid promptly in accordance with law. **MAINE BREWERS' GUILD** further agrees to hold the **CITY** harmless and indemnify it for all its costs or losses, just or unjust, including attorney's fees in defense of claims, relating to payment of any royalty, charge or fee for the use of material by **MAINE BREWERS' GUILD** during the event.

11.3. **MAINE BREWERS' GUILD** agrees to provide the **CITY** ten (10) complimentary tickets.

12. **Reimbursement of Damages.** If the **CITY**, in its sole discretion, determines that there is damage to any of the venues as a result of the Event, the **CITY** will notify **MAINE BREWERS' GUILD** prior to its repairing said damage, and **MAINE BREWERS' GUILD** shall be solely responsible for all costs related to said repairs and/or restoration. The **CITY** shall determine the nature and extent of any such damage, and shall have the sole discretion to determine the scope of the necessary repairs and/or restoration.

12.1. Prior to undertaking any repair work under paragraph 12, **CITY** will provide **MAINE BREWERS' GUILD** with an estimate of the cost of said work and will review the site and the work needed with **MAINE BREWERS' GUILD**. Only upon the **CITY**'s prior agreement, as to the scope, schedule and contractor to do the work, may **MAINE BREWERS' GUILD** have the repair work done by non-**CITY** sources at **MAINE BREWERS' GUILD's** sole cost and expense. Said work shall be completed to **CITY**'s satisfaction. Otherwise, the **CITY** will provide **MAINE BREWERS' GUILD** with a separate detailed invoice for repair costs upon their completion, which invoice shall be due and payable, in full, to the **CITY** within thirty (30) days of receipt thereof.

TERMINATION

13. **Termination by City Manager.** The City Manager may terminate this Agreement, without prior notice to **MAINE BREWERS' GUILD**, under the following conditions:

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(a) A good faith determination by the City Manager that **MAINI GUILD** has failed to comply with any of the terms or con Agreement;

(b) Failure of **MAINE BREWERS' GUILD** to respond appropriate and substantiated noise complaints about the Event as defined complaints reflect significant public inconvenience or other breaches of the peace, as determined by the City Manager;

(c) Upon determination by the City Manager that **MAINE BREWERS' GUILD** has made material misrepresentations to the **CITY** in connection with its use or occupancy of any of the Premises; or

(d) The **CITY** is prevented from furnishing use of any of the Premises, or any portion thereof to **MAINE BREWERS' GUILD** on the date(s) scheduled, by events, actions, or occurrences, not within the complete control of the **CITY**, including, but not limited to any official order or proceeding which limits or prohibits the use of the Premises. In the event of such termination, the **CITY**'s obligations hereunder shall be limited to the refunding of amounts previously paid by **MAINE BREWERS' GUILD** to the **CITY** in connection with this Agreement.

14. **Termination by MAINE BREWERS' GUILD**. **MAINE BREWERS' GUILD** may terminate this Agreement by written notice no later than Tuesday May 29, 2012. In the event **MAINE BREWERS' GUILD** terminates this Agreement, the **CITY** shall retain or collect from the **LESSEE** twenty-five percent (25%) of the Rental Fee amount and any actual costs directly incurred by **CITY** in preparation for the Event or any damage caused to the Premises by **MAINE BREWERS' GUILD**.

ADDITIONAL TERMS

15. **Waiver**. The failure of the **CITY** to insist upon a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that it may have regarding that specific instance only, and shall not be deemed to be a waiver of any subsequent breach or default in any terms and conditions.

16. **Assignment**. **MAINE BREWERS' GUILD** may not assign any right granted by this Agreement without the prior written consent of the City Manager; provided, however, that **MAINE BREWERS' GUILD** may engage subcontractors or hire individuals to perform services or provide supplies related to the Event.

17. **Attorney's Fees**. **MAINE BREWERS' GUILD** shall pay all reasonable attorney's fees and costs on behalf of **CITY** if: (i) **CITY** should institute litigation against it for breach of any term or condition of this Agreement; (ii) **CITY** should institute litigation against **MAINE BREWERS' GUILD** for an unlawful detainer of the Premises; (iii) **CITY** is made a party to litigation against **MAINE BREWERS' GUILD**, instituted by a third party related to use of the Premises under this Agreement; or (iv) (if the **CITY** is required to defend itself against any action or defense prosecuted by **MAINE BREWERS' GUILD** arising out of its use or occupancy of the Premises which does not result in a final judgment in favor of **MAINE**

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BREWERS' GUILD. Fees and costs of defense incurred by the **CITY** shall be reimbursed within thirty (30) days of invoice whether the litigation is prosecuted to judgment or not. Amounts advanced by **CITY**, not reimbursed within said thirty (30) days, shall bear interest at a rate of one and one half percent (1½%) per month.

18. **Complete Agreement.** This Agreement and its Exhibits constitute an entire and integrated agreement, and supersede all the terms and conditions of any prior agreement, negotiations, or representations, written or oral, between the parties. This Agreement may not be modified, except in writing, signed by the parties.

19. **Rights Acquired.** No rights will be acquired under this Agreement until the following have been provided to **CITY**, in forms acceptable to it:

19.1. An Original and Copy of this Agreement executed by **MAINE BREWERS' GUILD.**

19.2. Certificates of insurance and proof of security deposits.

19.3. Proof of payment of all fees which are required to be paid in advance.

IN WITNESS WHEREOF, the **CITY OF PORTLAND** has caused this Agreement to be signed by Mark Rees, City Manager, and **MAINE BREWERS' GUILD**, has caused this Agreement to be signed by Daniel Klubm, its President thereunto duly authorized the day and year first above written.

WITNESS:

CITY OF PORTLAND

_____

By: _____
for Mark Rees
City Manager

WITNESS:

_____

By: _____

Its: President - Maine Brewers' Guild

Approved:

_____ Legal Office