

Order 1-21/22
Passage: 9-0 on 7/19/2021

Effective 7/29/2021

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER GRANTING A THAMES STREET EXTENSION LICENSE
AT NORTHERN UTILITIES, INC., DOING BUSINESS AS UNITIL**

ORDERED, that a utility license at Thames Street Extension is hereby granted to Northern Utilities, doing business as Unitil, in substantially 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 documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

**CITY OF PORTLAND
LICENSE AGREEMENT
NORTHERN UTILITIES, INC d/b/a UNITIL.**

This License Agreement is made as of this ___ day of July, 2021, by and between the **CITY OF PORTLAND**, a body politic and corporate, located in Cumberland County, State of Maine (hereinafter the "CITY"), **NORTHERN UTILITIES, INC.**, a New Hampshire corporation with a mailing address of 6 Liberty Lane, Hampton, New Hampshire, 03842-1704 and offices located at 376 Riverside Industrial Parkway, Portland, Maine, doing business as **Unitil** ("LICENSEE").

RECITALS

WHEREAS, CITY owns certain real property known as the Thames Street Extension in Portland, Maine which property is described in a deed recorded in the Cumberland County Registry of Deeds (the "**Registry**") in Book 10924, Page 84, and shown as "Proposed Thames Street Extension" on a plan entitled "Subdivision Plat Portland Foreside Thames Street & Fore Street Portland, Maine" dated February 13, 2020 and recorded in the Registry in Plan Book 220, Page 65 (the "City Property"); and

WHEREAS, LICENSEE provides natural gas heating services in the City of Portland and desires to provide natural gas heating services to property adjacent to the City Property known as 58 Fore Street, Portland, Maine; and

WHEREAS, LICENSEE has requested that the CITY allow it to use a portion of the City Property (the "Licensed Area") for the installation and maintenance of Gas Facilities (as defined below), which Licensed Area is generally depicted on the attached Exhibit A and more particularly described in the attached Exhibit B, both of which are incorporated by this reference; and

WHEREAS, after due consideration, the CITY has agreed to provide the LICENSEE with this License Agreement.

NOW, THEREFORE, in consideration of the foregoing and subject to the covenants and conditions herein contained, the CITY hereby grants to LICENSEE the following rights in and to the Licensed Area:

1. License. A license to enter in, on and over the Licensed Area, on the terms and conditions set forth herein, to use the Licensed Area to install, maintain, operate, alter, repair, rebuild, inspect, patrol, replace in the same or different size, and remove, gas facilities, including, without limitation, mains, conduits, pipe lines, and valve sets, for the purpose of transporting, and to transport, natural gas and artificial gas, together with all necessary meters, fittings, fixtures, equipment and appurtenances (collectively, the "Gas Facilities"), over, under and within the Licensed Area. LICENSEE shall not place or store any hazardous materials on the Licensed Area; provided however natural gas is permitted within the Licensed Area provided it is contained within the Gas Facilities in accordance with all statutes, regulations, codes, and ordinances of any federal, state, or local government entity, authority, agency and/or department having jurisdiction over the Licensed Area. The location of the Licensed Area is tentatively shown on Exhibit A, but shall be subject to change by the CITY at its reasonable discretion. LICENSEE shall not use the Licensed Area for any use other than those specified in this License without the CITY's prior written approval. LICENSEE represents and warrants that it is the owner of the Gas Facilities. Prior to exercising any rights within the Licensed Area, LICENSEE shall first obtain written permission from the CITY's Director of Public Works or his or her designee. All activities in the Licensed Area shall be performed in a safe, diligent, and workmanlike manner, at LICENSEE's sole cost and expense. The City expressly reserves and retains the right to use, or to grant to others the right to use, the surface and subsurface of, and air space above, the areas subject to the rights herein granted. The License is subject to the rights of other utilities that may be located within the Licensed Area.

2. Term; Revocable License. The term of this License shall commence on the date first set forth above (the "Effective Date") and terminate on the date the CITY accepts the Licensed Area as a City street, at which time the Gas Facilities may continue to be located where installed subject to the CITY's location permitting standards for utilities for City Streets. In the event that the CITY accepts only a portion of the Licensed Area as a City street, this License shall terminate with respect to the accepted portion. Notwithstanding the foregoing, this License is revocable by the CITY upon thirty (30) days' notice to LICENSEE if LICENSEE fails to comply with any provisions of this License and LICENSEE fails to cure such failure within that 30 day period. CITY may also terminate this License for its convenience upon 6 months prior written notice to LICENSEE.

3. Trash Removal. LICENSEE shall be responsible for the disposal of all trash generated by it on the Licensed Area.

4. Compliance with laws: LICENSEE agrees to comply with all applicable laws and regulations in its operations hereunder, including but not limited to all applicable federal, state and local environmental law and regulations, including without limitation all laws and

regulations governing hazardous substances, with respect to all its activities on the Licensed Area, and to conduct all its activities on the Licensed Area in a safe, responsible, reasonable and business-like manner.

5. 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 the any act or omission of LICENSEE, its partners or members, agents, invitees, 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. LICENSEE's obligations under this paragraph shall survive the termination of this License.

6. Insurance. LICENSEE agrees, binds and obligates itself, its successors and assigns to maintain throughout the term of this License occurrence based comprehensive general liability insurance in the minimum amount of Four Hundred Thousand Dollars (\$400,000) (or the amount stated in the Maine Tort Claims Act, as may be amended from time to time) per occurrence for bodily injury, death, or property damage covering its activities hereunder and shall provide the CITY proof of such insurance upon the CITY's request. LICENSEE shall name the CITY as an additional insured on such insurance for claims for which the CITY does not have governmental immunity, including, without limitation, those areas where government immunity has been expressly waived as set forth in 14 M.R.S.A. § 8104-A, as limited by § 8104-B, and § 811. 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. Such insurance may include, in whole or in part, self-insurance by the LICENSEE. In addition, LICENSEE shall maintain and provide evidence of Workers' Compensation insurance in the statutory amount to the extent it may be required by law. Certificates evidencing such policies shall be delivered to the CITY upon request and shall provide the CITY with no less than thirty (30) days prior notice of cancellation or non-renewal. All insurance coverage required herein shall include coverage of all LICENSEE's contractors and subcontractors.

7. 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.

8. Restoration. LICENSEE agrees that it shall restore, repair, and replace all aspects of the City Property that are disturbed or damaged as a result of LICENSEE's presence or work on the City Property or the presence or work of its employees, contractors, subcontractors, invitees or volunteers. Any and all such repair, replacement, and restoration work shall be performed to the City's satisfaction and at the sole expense of LICENSEE. 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.

9. No property rights. This instrument is a license only and no provision hereof shall be construed as conveying an easement or other estate in land.

10. No Assignment. This License Agreement is non-transferable and shall not be assigned, pledged, sublet or otherwise transferred to another party except upon the prior written approval of the CITY.

11. Amendment. This License may be amended only in writing executed by the parties.

12. Counterparts/Signature. 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.

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

Signature page follows.

IN WITNESS WHEREOF, the CITY and LICENSEE, have executed this License as of the date written first above.

CITY OF PORTLAND

Witness

By: _____
Jon P. Jennings
Its City Manager

**NORTHERN UTILITIES, INC., d/b/a
UNITIL**

Witness

By: _____
Printed Name:
Its:
Approved as to funds:

Approved as to form:

City Corporation Counsel's Office

City Finance Director

EXHIBIT A

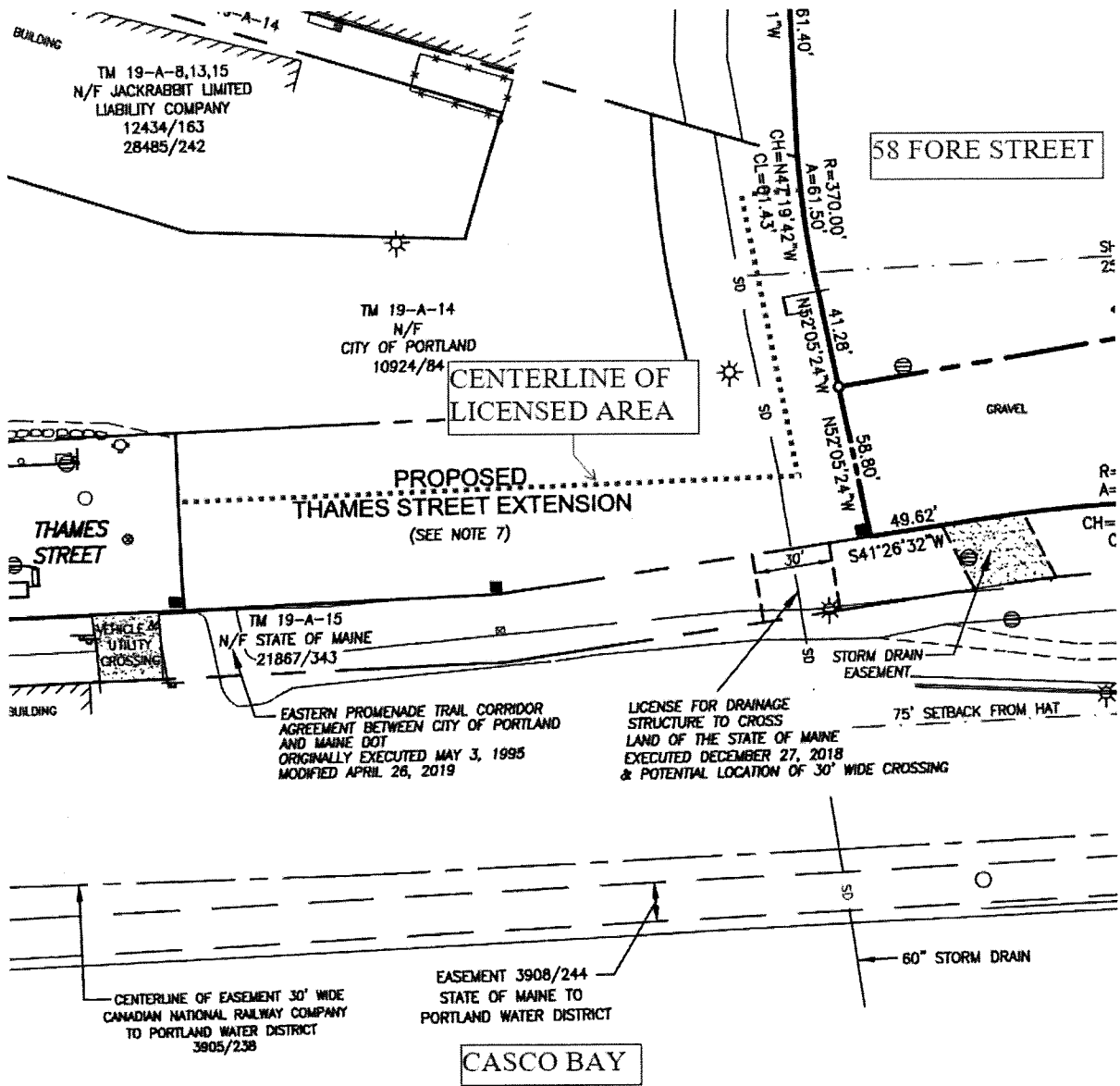


EXHIBIT B

Thames St. Extension

A certain lot or parcel of land situated northerly of Thames Street in the City of Portland, County of Cumberland and State of Maine bounded and described as follows:

Beginning at the northwesterly corner of the terminus of Thames Street being N47°28'43" E along the westerly sideline of Thames Street 153.05 feet from the northeasterly corner of land now or formerly of Hancock Street LLC as described in an instrument recorded in the Cumberland County Registry of Deeds in Book 34347, Page 163;

Thence, the following courses and distances through the land now or formerly of the City of Portland as described in an instrument recorded in said Registry of Deeds in Book 10924, Page 84;

N 47°28'43" E a distance of 188.32 feet;

N 30°15'31" E a distance of 12.49 feet;

N 52°05'24" W a distance of 33.61 feet;

Along a tangent curve to the right having a radius of 425.00 feet and an arc length of 70.64 feet, a chord bearing of N 47°19'42" W and chord distance of 70.56 feet;

N 42°34'01" W a distance of 5.51 feet to the easterly line of land now or formerly of 100 Fore Street LLC as described in an instrument recorded in said Registry of Deeds in Book 33748, Page 1;

Thence, N 66°39'40" E along the easterly line of land of said 100 Fore Street LLC 58.52 feet to the southerly line of land now or formerly of CPB2 I LLC as described in an instrument recorded in said Registry of Deeds in Book 35576, Page 153 and in Book 35264, Page 286;

Thence, along the southerly line of land of said CPB2 I LLC along a curve to the left having a radius of 370.00 feet, an arc length of 47.73 feet, a chord bearing of S 48°23'40" E and chord distance of 47.70 feet;

Thence, S 52°05'24" E continuing along the southerly line of land of CPB2 I LLC 100.09 feet to the westerly line of land now or formerly of State of Maine;

Thence, S 41°26'32" W along the westerly line of said State of Maine 145.33 feet;

Thence, S 47°28'43" W continuing along the westerly line of land of State of Maine 121.01 feet to the northeasterly corner of the terminus of said Thames Street;

Thence, N 42°31'17" W along the northerly terminus of Thames Street 68.00 feet to the point of beginning, containing 22,459 s.f. or 0.52 acres, more or less.

Bearings are based on Maine State Plane Coordinate System.