

Order 125-16/17

Passage: 8-0 (Thibodeau absent) on 2/6/2017

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**

Effective 2/16/2017

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER GRANTING A UTILITY LICENSE
AT THE PORTLAND TECHNOLOGY PARK
TO OXFORD COUNTY TELEPHONE SERVICE CO.**

ORDERED, that a revocable utility license at the Portland Technology Park is hereby granted to Oxford County Telephone Service Co. 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.

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into as of the ____ day of February between CITY OF PORTLAND, a body politic and corporate organized and existing under the laws of the State of Maine and declarant of PORTLAND TECHNOLOGY PARK CONDOMINIUM, having a mailing address of 389 Congress Street, Portland, Maine 04101 (“City” or “Licensor”), and OXFORD COUNTY TELEPHONE SERVICE CO. (d/b/a Oxford Networks), a Maine corporation, with a place of business at 491 Lisbon Street, Lewiston, Maine 04240 (hereinafter the “Licensee”), who hereby agree as follows:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, City grants a nonexclusive revocable license to Licensee in common with others, to construct, erect, bury, rebuild, replace, operate, maintain and do all other actions involving telecommunication distribution equipment and facilities, consisting of wires and cables to be placed in duct of existing underground conduit, together with all necessary fixtures and appurtenances connected therewith, along, under and across a portion of the land conveyed to the City by deed recorded in the Cumberland County Registry of Deeds, Book 15211, Page 31. Said portion is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “Licensed Premises”). The Licensed Premises is part of the area identified as “Easement Area 1” on the Second Amended Subdivision Plat Of Portland Technology Park Condominium, Rand Road, Portland, Maine, dated September 29, 2011, prepared by SGC Engineering, LLC for the City of Portland – Declarant, and approved by the City of Portland Planning Board on December 8, 2015, recorded in the Cumberland County Registry of Deeds, Plan Book 216, Page 63. The Licensee shall have the further right to enter the Licensed Premises for all of the herein stated purposes and to connect said conduits, cables and wires which are located or which may be placed in parcels of land, adjacent or contiguous to the aforesaid premises. With the prior approval of the Portland Technology Park Condominium Association, Grantee shall also have the right to cut, trim, and remove such trees, bushes and growth as the Grantee may from time to time reasonably deem necessary for the safe and efficient operation and maintenance of Grantees facilities. Licensee’s use of the Licensed Premises is for the purpose of providing telecommunication services to one or more unit owners of the Portland Technology Park Condominium and is subject to the following conditions:

1. All work performed upon and use of the Licensed Premises 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 property adjacent to the Licensed Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore any portion of the Licensed Premises and adjacent property damaged by work conducted by Licensee related to this License to substantially its condition prior to such work.
2. By acceptance of this License, Licensee hereby covenants and agrees to indemnify, defend, and hold harmless the City, Portland Technology Park Condominium Association, and its unit owners, their successors and assigns (the “Indemnified Parties”) from and against any and all loss, damage, cost, expense, or liability based on personal injury, death, loss, or damage to property suffered or incurred by any employee, licensee, or agent of Licensee, which may arise from Licensee’s exercise of its rights herein granted hereunder, except and in proportion to the extent such loss, damage, cost, expense, or liability is due in whole or in part by the Indemnified Parties, their officers, agents, employees, guests, or invitees.
3. Prior to the execution of this License, Licensee will procure and maintain Automobile Insurance and General Public Liability Insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, naming the City and Portland Technology Park Condominium Association as an additional insureds thereon for coverage only in those areas where government immunity has been expressly waived by 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 under the Maine Tort Claims Act, other Maine statutory law, judicial precedent or common law. 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 insurance provider or agent.

4. This Agreement may be revoked by the City or Portland Technology Park Condominium Association sixty (60) days after receipt by the Licensee of written notice that an Event of Revocation has occurred, identifying such Event of Revocation, provided that such Event of Revocation is not cured within thirty (30) days after receipt of such notice by Licensee. "Event of Revocation" shall mean: 1) Licensee fails to comply with any terms or conditions of this License; 2) Licensee no longer provides services to any unit owner of the Portland Technology Park Condominium Association. Any notice of an Event of Revocation delivered pursuant to Section 5 of this Agreement must be sent by certified mail, return receipt requested to the Licensee at the address for Licensee set forth above, or at such other address as the Licensee may provide to the City and Portland Technology Park Condominium Association in writing from time to time. Upon revocation of this License, Licensee shall, at its own expense, remove from the Licensed Premises all of its equipment, facilities, wires, and cables, including, without limitation, all of its wires and cables placed in duct of existing underground conduit.

5. 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. Licensee further understands and agrees that it must obtain at its own cost any permits and licenses required for its operations.

6. This instrument is a License and no provision hereof shall be construed as conveying an easement or other estate in land. This instrument shall not be recorded in any Registry of Deeds.

7. No Assignment and Termination: This License 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.

8. Amendment: This License shall be amended only in writing executed by the parties.

9. 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.

IN WITNESS WHEREOF, the parties have caused this Revocable License to be executed by their duly authorized representatives, as of the day and year first written above.

CITY OF PORTLAND, MAINE

Witness

By: _____
Jon P. Jennings,
Its City Manager

OXFORD COUNTY TELEPHONE SERVICE CO.

Witness

By: _____
Printed Name: _____
Title: _____

JOINDER BY PATRONS OXFORD INSURANCE COMPANY

PATRONS OXFORD INSURANCE COMPANY, a Maine insurance corporation, and owner of Unit 4 of the Portland Technology Park Condominium, hereby joins this instrument solely to indicate its joinder to, and consent to, this instrument.

PATRONS OXFORD INSURANCE COMPANY

By: _____

Mark A. Pettingill, Its President

EXHIBIT A

Commencing at a point on the southerly sideline of Rand Road, said point being marked with a 5/8" rebar with cap (PLS#2002) located at the northeasterly corner of a parcel of land now or formerly of the City of Portland as described in a deed recorded in Book 15211, Page 31 of the Cumberland County Registry of Deeds;

Thence, from said Point of Commencement, S62°51'57"W a distance of one hundred twelve and 43/100 (112.43') feet along the southerly sideline of Rand Road to a 5/8" rebar with cap (PLS #2002) found, thence S81°40'58"W a distance of three hundred sixty nine and 39/100 (369.39') feet along the southerly sideline of Rand Road to a 5/8" rebar with cap (PLS #2002) found, thence Westerly along the southerly sideline of Rand Road a distance of forty eight and 62/100 (48.62') feet along a curve to the right with a radius of one thousand one hundred eighty and 00/100 (1180.00') feet to a monument to be set and the Point of Beginning of Easement Area 1 herein described,

Thence from said Point of Beginning Southwesterly a distance of two hundred eighty one and 21/100 (281.21') feet along a curve to the right (not tangent with the previous course) with a radius of two hundred thirty and 00/100 (230.00') feet to a monument (to be set), said curve having a chord bearing of S37°22'03"W and a chord distance of two hundred sixty four and 02/100 (264.02) feet,

Thence S35°54'43"E a distance of twenty and 97/100 (20.97') feet to a point,

Thence Southwesterly a distance of forty and 37/100 (40.37') feet along a curve to the right (not tangent with the previous course) with a radius of two hundred fifty and 00/100 (250.00') to a point, said curve having a chord bearing of S75°30'34"W and a chord distance of forty and 32/100 (40.32) feet,

Thence S80°08'06"W a distance of one hundred twenty five and 99/100 (125.99') feet to a monument (to be set),

Thence Southwesterly a distance of one hundred seventy five and 29/100 (175.29') feet along a curve to the left with a radius of one hundred fifty and 00/100 (150.00') feet to a monument (to be set),

Thence S12°59'08"W a distance of one hundred forty two and 05/100 (142.05') feet to a monument (to be set),

Thence Southwesterly a distance of one hundred forty three and 10/100 (143.10') feet along a curve to the right with a radius of three hundred fifty and 00/100 (350.00') feet to a monument (to be set),

Thence S36°24'40"W a distance of forty two and 76/100 (42.76') feet to a point,

Thence Southwesterly a distance of one hundred forty one and 33/100 (141.33') feet along a curve to the right with a radius of three hundred thirty nine and 00/100 (339.00') to a point,

Thence S75°00'00"W a distance of sixty nine and 87/100 (69.87') feet to a point,

Thence S15°00'00"E a distance of seventeen and 60/100 (17.60') feet to a point,

Thence S29°19'50"W a distance of seventy five and 02/100 (75.02') feet to a point,

Thence S87°29'56"W a distance of nineteen and 03/100 (19.03') feet to a point,

Thence Southwesterly, westerly and northwesterly a distance of two hundred seventy three and 30/100 (273.30') feet along a curve to the right (not tangent with the previous course) with a radius of eighty five and 00/100 (85.00') feet to a point, said curve having a chord bearing of N76°47'08"W and a chord distance of one hundred sixty nine and 88/100 (169.88') feet,

Thence N50°49'40"E a distance of one hundred ninety and 32/100 (190.32') feet to a point,

Thence Northeasterly a distance of seventy one and 09/100 (71.09') feet along a curve to the left (not tangent with the previous course) with a radius of eighty nine and 00/100 (89.00') feet to a point, said curve having a chord bearing of N71°42'16"E and chord distance of sixty nine and 21/100 (69.21') feet,

Thence Northeasterly a distance of twenty six and 82/100 (26.82') feet along a reverse curve to the right with a radius of ninety five and 00/100 (95.00') feet to a point, said curve having a chord bearing of N56°54'40"E and chord distance of twenty six and 73/100 (26.73') feet,

Thence N65°00'00"E a distance of five and 88/100 (5.88') feet to a point,

Thence Southeasterly a distance of thirty five and 37/100 (35.37') feet along a curve to the right with a radius of twenty five and 00/100 (25.00') feet to a point, said curve having a chord bearing of S74°28'25"E and chord distance of thirty two and 49/100 (32.49') feet,

Thence N50°25'32"E a distance of sixty two and 08/100 (62.08') feet to a point,

Thence N45°00'00"E a distance of sixty one and 90/100 (61.90') feet to a point,

Thence N23°58'49"E a distance of sixty and 69/100 (60.69') feet to a point,

Thence N63°52'43"W a distance of eight and 11/100 (8.11') feet to a point,

Thence Northeasterly a distance of forty six and 88/100 (46.88') feet along a curve to the left (not tangent with the previous course) with a radius of two hundred seventy and 00/100 (270.00') feet to a monument (to be set), said curve having a chord bearing of N17°57'37"E and chord distance of forty six and 82/100 (46.82') feet,

Thence N12°59'08"E a distance of one hundred forty two and 13/100 (142.13') feet to a monument to be set,

Thence Northeasterly a distance of seventy three and 11/100 (73.11') feet along a curve to the right (not tangent with the previous course) with a radius of two hundred thirty and 00/100 (230.00') feet to a point, said curve having a chord bearing of N22°14'22"E and chord distance of seventy two and 80/100 (72.80') feet,

Thence Northwesterly a distance of sixty four and 22/100 (64.22') feet along a curve to the right (not tangent with the previous course) with a radius of seventy four and 58/100 (74.58') feet to a point, said curve having a chord bearing of N39°39'58"W and chord distance of sixty two and 25/100 (62.25') feet,

Thence N15°00'00"W a distance of two and 94/100 (2.94') feet to a point,

Thence N75°00'00"E a distance of one hundred forty one and 62/100 (141.62') feet to a monument (to be set),

Thence Northeasterly a distance of sixty four and 00/100 (64.00') feet along a curve to the right (not tangent with the previous course) with a radius of two hundred thirty and 00/100 (230.00') feet to a monument (to be set), said curve having a chord bearing of N72°09'49"E and a chord distance of sixty three and 79/100 (63.79') feet,

Thence N80°08'06"E a distance of one hundred twenty five and 99/100 (125.99') feet to a monument (to be set),

Thence N32°26'19"E a distance of twenty three and 23/100 (23.23') feet to a point,

Thence N00°04'04"E a distance of seventy nine and 87/100 (79.87') feet to a point,

Thence S89°51'35"E a distance of one hundred fourteen and 00/100 (114.00') to a monument (to be set),

Thence Northerly a distance of fifty six and 12/100 (56.12') feet along a curve to the left (not tangent with the previous course) with a radius of one hundred seventy and 00/100 (170.00') feet to a monument (to be set) at the

southerly sideline of Rand Road, said curve having a chord bearing of N14°13'36"E and a chord distance of fifty five and 87/100 (55.87') feet,

Thence Easterly a distance of sixty and 59/100 (60.59') feet along a curve to the left (not tangent with the previous course) and the southerly sideline of Rand Road with a radius of one thousand one hundred eighty and 00/100 (1180.00') feet to the Point of Beginning, said curve also having a chord bearing of N85°30'52"E and chord distance of sixty and 58/100 (60.58') feet.

The above described area is more particularly depicted as "Easement Area 1" on a plan entitled Second Amended Subdivision Plat Of Portland Technology Park Condominium, Rand Road, Portland, Maine, dated September 29, 2011, prepared by SGC Engineering, LLC for the City of Portland – Declarant, and approved by the City of Portland Planning Board on December 8, 2015, recorded in the Cumberland County Registry of Deeds, Plan Book 216, Page 63.

Bearings referenced herein are grid north.

SUBJECT TO all rights, easements, and restrictions of record, including (without limitation) the following:

1. Rights and easements granted to the Portland Pipe Line Company in a deed dated August 28, 1941, recorded in Deed Book 1646, Page 189 (CCRD) and in a deed dated May 24, 2012, recorded in Deed Book 29703, Page 129 (CCRD).
2. Rights and easements granted to Portland Trails in a deed dated July 16, 2012 and recorded in Deed Book 30001, Page 66 (CCRD) as amended by an Amendment to And Partial Release of Conservation Easement to Portland Trails dated March 8, 2016 and recorded in the CCRD Book 32964, Page 28.
3. Rights and easements granted to Portland Water District to Easement Area 1 in a deed dated March 8, 2016 and recorded in the CCRD Book 32964, Page 46.
4. Rights and easements granted to Northern Utilities, Inc. d/b/a/ Unitil by an easement deed dated March 18, 2016 recorded in the CCRD Book 32964, Page 34.
5. Rights and easements granted to Central Maine Power Company dated March 8, 2016 recorded in the CCRD Book 32964, Page 23.
6. Declaration of Condominium for the Portland Technology Park recorded in the CCRD Book 32969, Page 97.
7. Such statement of facts and conditions as shown on a Subdivision Plat of Portland Technology Park Condominium prepared by SGC Engineering, LLC dated September 29, and recorded in CCRD Plan Book 212, page 324, as amended by a First Amended Subdivision Plat of Portland Technology Park Condominium prepared by SGC Engineering, LLC dated September 29, 2011, last revised through May 1, 2015, and recorded in CCRD Plan Book 215, Page 250, and as further amended by a Second Amended Subdivision Plat of Portland Technology Park Condominium prepared by SGC Engineering, LLC dated September 29, 2011 and approved by the City of Portland Planning Board on December 8, 2015, recorded in the Cumberland County Registry of Deeds, Plan Book 216, Page 63.
8. Rights and easements granted to Northern New England Telephone Operations LLC dated March 8, 2016 and recorded in the CCRD Book 32964, Page 41.