

Order 5 -06/07

Passage: 7/17/06 8-0 (Duson absent)

JAMES I. COHEN (MAYOR)(5)

WILLIAM R. GORHAM (1)

KAREN A. GERAGHTY (2)

DONNA J. CARR (3)

CHERYL A. LEEMAN (4)

## **CITY OF PORTLAND**

IN THE CITY COUNCIL

JAMES F. CLOUTIER (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

EDWARD J. SUSLOVIC (A/L)

### **ORDER AUTHORIZING LICENSE TO BERMAN ASSOCIATES FOR ROAD CONSTRUCTION RE: AIRPORT PROPERTY**

**ORDERED,** that the City Manager is authorized to execute a license for road construction to Berman Associates substantially as provided in Attachment 6.

**LICENSE FOR ROAD CONSTRUCTION  
OVER LAND OF THE CITY OF PORTLAND**

**THIS LICENSE** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the **CITY OF PORTLAND**, a municipal corporation with offices at 389 Congress Street, Portland, Maine, 04101, hereinafter called "Portland" and \_\_\_\_\_, a \_\_\_\_\_ corporation with a mailing address of \_\_\_\_\_, hereinafter called "Licensee".

**WHEREAS**, Portland owns land located within the City of South Portland and will be constructing a road from Westbrook Street easterly for users of the Portland International Jetport's proposed south general aviation development area, said road to be built to state and City of South Portland standards for acceptance; and

**WHEREAS**, Licensee wishes to construct a connecting road from the City road over Portland owned land (hereinafter the "Property") from the end of the City constructed street to \_\_\_\_\_, thereby completing the connection with Westbrook Street, said connecting road to be built to state and City of South Portland standards;

**NOW, THEREFORE**, in consideration of the foregoing and the covenants herein contained, Portland hereby grants to \_\_\_\_\_ a license to enter on, over and under the Property, on the conditions contained herein:

1. Purpose. The purpose of this License is to permit Licensee, at its own cost and expense, to perform pre-construction and construction activities in order to construct a street over the Property, as described in Exhibit A, attached hereto and incorporated herein, said street to be built to City of South Portland standards and to be accepted by the City Council of the City of South Portland upon completion.
2. License Area. The area of the License is as described in Exhibit A.
3. Permitted Activities. The activities permitted on the licensed area are those activities reasonably necessary to accomplish the purpose of this License as stated in Paragraph 1. These activities include the following:
  - a. surveying activities, including placement of stakes on the Property;
  - b. clearing of brush from the Property;
  - c. performing geotechnical test holes and test borings on the Property.
  - d. construction and maintenance of a town way built to applicable City of South Portland and state standards for a dedicated, accepted street, including the right to install and maintain underground utilities

and above-ground signage and lighting; provided, however, any such signage and/or lighting shall be subject to the prior approval of Portland and the Federal Aviation Administration or any successor agency thereto.

Any additional activities shall require the prior written approval of the Airport Manager, or his designee.

The rights granted herein shall be exercised and used in such a manner as not to cause any damage or destruction of any nature whatsoever to, or interruption of, the use of the adjoining lands owned by Portland, including but not limited to any water runoff onto Portland's land.

4. Non-interference. All activities hereunder shall not interfere with Portland's use of the Property and with the operations of the Portland International Jetport, including but not limited to its radio and electrical communications, and in full compliance with all applicable federal, state and local laws and regulations. No obstructions in excess of height permitted by the Federal Aviation Administration (FAA) shall be used or placed on the Property.

5. Coordination. Prior to any activities hereunder, the parties shall meet and confer as to the nature and the schedule of the activities planned to take place on the Property, and Licensee shall notify Portland as to who will be performing work upon the Property, including but not limited to any contractors or subcontractors. Licensee shall provide Portland with prior notice of any material alteration to such planned activities or their scheduling. Portland's representative for all notice hereunder shall be Airport Manager 874-8877 or Operations Manager, 772-0466, or duly authorized designee(s), and Licensee's representative shall be \_\_\_\_\_, \_\_\_\_\_, or his/her duly authorized designee(s), or such other persons as the parties specify in writing.

6. Permits. Licensee will obtain, at its own cost, any and all necessary federal, state or local permits, including any required review and permits by the FAA, required in connection with its activities hereunder. Portland will cooperate with Licensee to obtain any required federal, state or local permits.

7. Indemnification. To the fullest extent permitted by law, Licensee, and its contractor(s), shall defend, indemnify and hold Portland, 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 negligent act or omission of Licensee, its officers, agents or employees, or its contractors and their officers, employees or subcontractors, acting under this License, said claims to include, without being limited to, claims for personal injury or property damage, including damage to Portland employees or property.

The terms of this indemnification provision shall survive termination or revocation of this License Agreement.

8. Insurance. Licensee shall procure and maintain throughout this Agreement, or provide through self-insurance, general comprehensive liability insurance and automobile liability insurance covering claims on an occurrence basis in the minimum amount of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) aggregate for bodily injury and for property damage. Said policy of insurance shall name Portland, its officers, agents and employees, as additional insured for purposes of Licensee's operations hereunder. All liability policies of contractors performing work under this License Agreement, if any, shall also name Portland, its officers, agents and employees, as Additional Insured. Policies or certificates evidencing such policies shall be delivered to Portland and shall provide Portland with no less than thirty (30) days prior notice of cancellation or non-renewal.

Licensee shall provide evidence of workers compensation insurance as required by Maine law and shall require its contractors, consultants or subcontractors to provide such evidence of insurance. All such workers compensation insurance shall include a rider waiving all rights of subrogation against Portland, its officers, agents or employees if reasonably available.

All insurance policies hereunder shall be primary to any insurance, or self-insurance, maintained by Portland.

9. Mechanic's lien. Any mechanic's lien or any other lien filed against the Property or other property owned by Portland by reason of Licensee's activities under this License Agreement shall be defended (by counsel reasonably acceptable to Portland) or promptly discharged by Licensee at its own expense. If Licensee should fail either to defend Portland against the lien or to discharge it, then Portland may do so at Licensee's expense. In the event of such an undertaking by Portland, Licensee will promptly reimburse Portland for all of its reasonable costs and expenses in so doing, including, but not limited to, reimbursement of Portland's reasonable counsel fees, as well as costs which may be incurred by it in substituting a bond in place of the lien.

10. Care of Property. Licensee will be responsible for all maintenance of the Property during the term of this License, including without limitation all clearing of brush or snow required for its uses, and for repair of any and all damage to the Property or to other Portland property which may occur as a result of Licensee's activities under this License. All repairs shall be subject to prior approval of Portland.

11. Term. This License shall be in effect from the date of execution and shall terminate upon the happening of the sooner of the following: a) thirty six (36) months, or b) the effective date of the dedication and acceptance by the City Council of the City of South Portland of the road constructed hereunder; unless extended by mutual agreement of the parties. Notwithstanding the foregoing, this License is revocable upon fourteen (14) days prior written notice from Portland to Licensee for violation of any of the terms of this License.

12. Assignment. Except as provided herein for construction activities by contractors, this License may not be assigned, transferred or conveyed, except upon the prior written approval of the City Manager of Portland, which approval shall not be unreasonably withheld.

13. Extent of rights. This instrument is a License Agreement and no provision hereof shall be construed as conveying an easement or other estate in land. Licensee acquires no rights in and to the Property, except as set forth herein.

This License Agreement is signed on the date first above stated by the duly authorized representatives of the Cities of Portland and Licensee.

**WITNESS:**

\_\_\_\_\_

**CITY OF PORTLAND**

By: \_\_\_\_\_  
Joseph E. Gray, Jr., City Manager

**WITNESS:**

\_\_\_\_\_

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

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

## AREA OF LICENSE

A certain 66 foot wide area of land situated on the southeasterly side of Westbrook Street, in the City of South Portland, County of Cumberland, State of Maine being over a portion of property depicted on a plan of land titled "Lot Division of State of Maine, Maine Youth Center" dated through December 11, 2000 by Sebago Technics, Inc., said area being more particularly bounded and described as follows:

Beginning at a capped 5/8-inch rebar set in the southeasterly line of said Westbrook Street at the northwesterly corner of land to be conveyed to Portland International Jetport, being the northeasterly corner of land depicted as Long Creek Development, LLC as shown on said plan;

Thence N 43°-32'-44" E, by and along said Westbrook Street, a distance of 66.02 feet to a point;

Thence S 44°-56'-34" E, passing through land of the Grantor, a distance of 1,356.61 feet to a point;

Thence S 45°-03'-26" W, passing through said land of the Grantor, a distance of 66.00 feet to a point in the division line of land of said Portland International Jetport and Long Creek Development, LLC, as shown on said plan, said point being N 44°-56'-34" W, 140.90 feet from a capped 5/8-inch rebar set at an angle point;

Thence N 44°-56'-34" W, by and along said land of Long Creek Development, LLC, a distance of 1354.87 feet to the point of beginning.

Meaning and intending to describe an area containing 89,479 square feet, or 2.05 acres, more or less, being depicted as a portion of the property shown on a plan of land titled "Lot Division of State of Maine, Maine Youth Center" dated through December 11, 2000 by Sebago Technics, Inc.

The bearings referenced herein are based upon Grid North NAD 1983 Maine West Zone.

DCS:dcs/jc  
May 31, 2005