

STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION

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LAND LICENSE

This agreement is made and entered into this 8<sup>th</sup> day of June, 2017, by **MAINE DEPARTMENT OF TRANSPORTATION** (hereinafter called "Department", and **CITY OF PORTLAND** (hereinafter called "Licensee"), for the use of a parcel of land located along Thames Street in Portland, Maine, said land being part of Department's former Portland rail yard. Said parcel is more fully described as follows:

Parcel of land (hereinafter called "Leased Premises") located along Thames Street beginning opposite India Street and ending opposite Hancock Street. Said parcel is shown on the attached plan as "City License Area for Season Retail Leases" on a plan marked "Exhibit A" attached hereto and made a part hereof.

This License shall be subject to the following terms and conditions:

1. **TERM:** The Term of the License will commence on the date written above, and run for a term of one year or until suspended or terminated at any time and for any reason by either party by means of 30 days written notice. This License shall automatically renew on an annual basis provided Licensee has met all the obligations as outlined in this agreement. The provisions of Paragraph 12 herein shall survive any termination.
2. **RENT:** Licensee agrees to pay as rental for the premises on an annual basis the sum of fifty percent (50%) of the total revenues collected by Licensee. Licensee shall remit rent to Department at the conclusion of seasonal vending.
3. **RENT ADJUSTMENT:** The Department reserves the right to review the rental rate in advance of the annual anniversary date of this License.
4. **OCCUPANCY:** Licensee agrees that the premises shall be used and occupied by vendors approved by Licensee for Ocean Gateway activities. Neither the premises nor any part thereof shall be used at any time during the term of this License by Licensee for any other purpose. Licensee has the right to regulate the use of the Leased Premises in accordance with Licensee's established practices, including, but not limited to the right to impose time limits on public use and enforce same. Licensee shall be responsible for securing any permits or approvals necessary to its use of the premises and shall comply with all environmental and sanitary laws, and all statutes, ordinances, rules, and orders of appropriate governmental authorities pertaining to the premises, to its activities thereon and to all other activities occurring in connection with the exercise of the rights granted under this agreement.

5. UTILITIES: Department shall pay for the following: None. Licensee shall pay for the following: All utilities. Licensee shall pay any local, State or Federal taxes assessed on the parcel.
6. ASSIGNMENT AND SUBLETTING: Licensee has the right to sublet the premises to vendors approved by the Licensee. Licensee will not assign this License.
7. MAINTENANCE AND REPAIR: Licensee agrees to provide all maintenance of the Leased Premises for the term of this License, including but not limited to repairs, mowing, yard care, garbage removal, snowplowing, and clean-up and removal of winter sand. All such maintenance shall be performed at the Licensee's sole and exclusive expense.
8. ALTERATIONS: There shall be no alterations to the premises or other improvements thereon without the prior written consent of Department. Upon the prior written consent of Department, the improvements will be completed at Licensee's own cost and expense and on terms and conditions satisfactory to Department.
9. INSURANCE: Licensee shall at all times self-insure or carry personal property and equipment insurance sufficient to cover the value of all personal property and equipment on the Department's property. Licensee shall carry insurance coverage for both personal injury and property damage occurring as a result of Licensee's activities and presence on, and its use, alteration and occupation of any of the Department's property. This coverage shall apply to any and all claims or causes of action resulting in death, bodily injury or property damage and shall be applicable to all such claims brought by any person or arising out of any single occurrence or in the aggregate. Coverage shall be in accordance with the limits of 14 M.R.S.A. §8101, *et seq.* Licensee shall provide proof of the above-described insurance upon request by the Department. Failure to maintain this required insurance coverage shall result in the automatic termination of this License.
10. DANGEROUS MATERIALS: Licensee shall not keep or have on the premises any article or thing of a dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the premises or that might be considered hazardous or extra hazardous by any responsible insurance company.
11. RIGHT OF ENTRY: Licensee shall allow Department to enter the premises at all reasonable hours upon reasonable advance notice by Department. Department will give advance notice of five (5) business days whenever possible. Licensee shall allow Department to enter the premises at all times in the case of an emergency. Furthermore, Department need not give Licensee notice of its intent to enter when it is impracticable to do so or an emergency exists. Department retains the right to use the premises during the term hereof so long as such use does not actually interfere in the Licensee's activities. Licensee's insurance and indemnity obligations hereunder do not apply to claims, injuries, liabilities, losses, costs, damages, harm or expenses of any kind arising out of or related to the Department's use of the premises.
12. INDEMNIFICATION AND WAIVER: Licensee shall indemnify and save Department harmless from all liability, loss, cost, damage, harm or expense, including attorney's fees, arising

out of or relating to Licensee's use and occupation of the Department's property. Licensee agrees to hold Department harmless from any claims for damages no matter how caused. The indemnity provided by Licensee is subject to and limited by the defenses, immunities and limitations of liability available to the Licensee under the Maine Tort Claims Act, 14 M.R.S.A. §8101, *et seq.* and other applicable law. Licensee waives all present and future claims against Department, as such, that might be considered as exceptions to the immunity otherwise provided to Department by the Maine Tort Claims Act.

13. ACCESS: Licensee shall be solely responsible for obtaining any other rights of access required for its purposes.

14. NO WARRANTIES: Department makes no warranty or representation about the condition of the premises and it shall be the Licensee's responsibility to determine whether any improvements to the premises are necessary in order to allow its use thereof. In the event such improvements are required, the work shall be performed by the Licensee at the expense of the Licensee, subject to the provisions of Paragraph 8 of this License, and all such improvements shall be the property of the Department.

15. SEVERABILITY: Should a provision or any part of this agreement be declared void by a court of competent jurisdiction, the other provisions and parts of this agreement shall remain in force.

16. SURRENDER: Licensee shall surrender the premises to Department within thirty (30) days of the expiration or sooner termination of the License. If License is terminated prior to expiration date by Department due to a need for the land for rail operations, said premises to be restored to the same conditions as when received.

17. HOLDING OVER: Any holding over by Licensee under this License, without Department's written consent, shall constitute trespass. The parties mutually agree that any personal property placed on the property by the Licensee and remaining on the Department's property fifteen (15) days after the termination of this License shall be deemed abandoned and title thereto shall vest automatically in the Department.

18. NONPAYMENT OF RENT OR OTHER DEFAULT: Upon default in the payment of rent, or any part thereof, or if any default is made in the performance of any of the terms or conditions described above, the License shall terminate immediately at the option of the Department. Department shall give Licensee written notice of such termination.

19. WAIVER: Waiver by Department of any breach of condition under this License must be in writing and is not a waiver of any other condition or duty of Licensee or of any subsequent breach of the same condition or duty.

20. NOTICES: All communications and notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served in hand or by certified mail addressed as follows or such other address as they may designate in writing from time to time:

TO DEPARTMENT: Attention: Director, Office of Freight Transportation  
State of Maine  
Department of Transportation  
#16 State House Station  
Augusta, Maine 04333-0016

TO LICENSEE: City of Portland  
389 Congress Street  
Portland, Maine 04101

IN WITNESS WHEREOF, the parties have executed this License on the date first written above.

STATE OF MAINE DEPARTMENT  
OF TRANSPORTATION

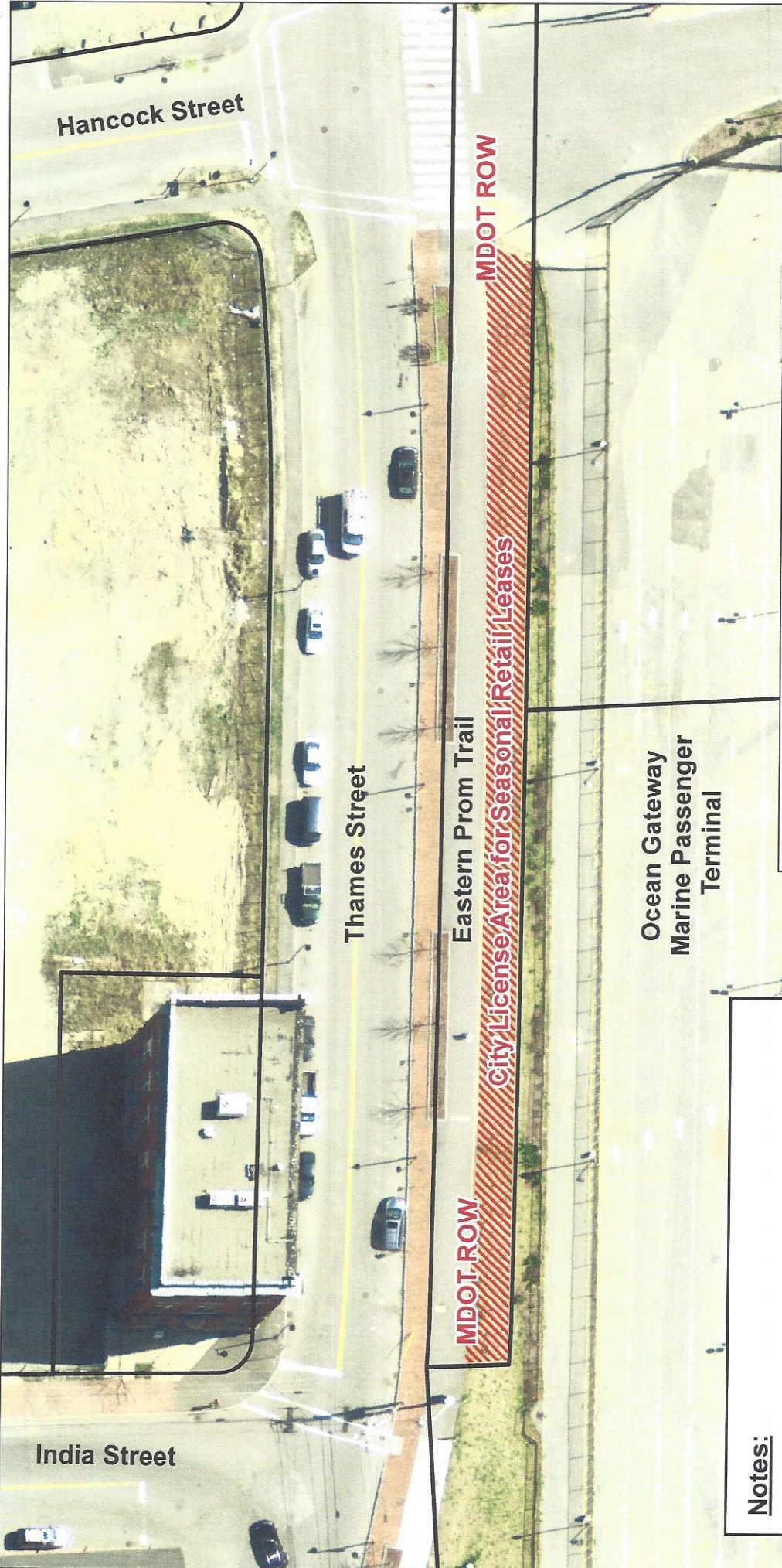
Julia M. Picard  
Witness

By N. Moulton  
Nathan Moulton, Director  
Office of Freight Transportation

CITY OF PORTLAND

Judith Rosen  
Witness

By J. P. Jennings  
Name: Jon P. Jennings  
Title: City Manager



Hancock Street

India Street

Thames Street

Eastern Prom Trail

MDOT ROW

City License Area for Seasonal Retail Leases

Ocean Gateway  
Marine Passenger  
Terminal

MDOT ROW

**Notes:**

1. Vendors will not set up fixed or movable features within 6 feet of the southerly sideline of the Eastern Prom Trail.
2. Vendors are responsible for securing off-site legal parking for all motor vehicles other than licensed food trucks and self-contained vending trucks and trailers (vehicles set up as the vendor's point of sale.)
3. Vendors will provide space within their leased stall to process and queue customers without trespass onto adjacent lots or onto artist vending areas.



**Exhibit A**  
**City of Portland License Area**

Exhibit prepared by the City of Portland  
Economic Development Department  
from city GIS program data. Intended  
for use as a license exhibit to allow seasonal  
leases for temporary structures only.  
April 2017

