

LICENSE AGREEMENT

This License Agreement (the "License Agreement") is entered into this 1 day of April, 2021, between the **Maine Port Authority**, a body both corporate and politic with a mailing address of 460 Commercial Street, Portland, ME 04101 (hereafter the "MPA"), and the **Portland Water District**, a quasi-municipal water utility, organized and existing under the laws of the State of Maine, and located at P.O. Box 3553, 225 Douglass Street, Portland, Maine 04104-3553 (hereafter the "District").

I. Background

- A. MPA owns a certain parcel on Commercial Street in Portland, conveyed by a Deed of Convenience from the Maine Department of Transportation, which deed is recorded in the Cumberland County Registry of Deeds at book 36501 and page 146, a copy of which is attached hereto as **Exhibit A** (hereinafter, the "Commercial Street Parcel").
- B. The predecessor-in-interest, the State of Maine Department of Transportation ("MDOT") previously held under, *inter alia*, a deed recorded in the Cumberland County Registry of Deeds at book 31408 and page 301. *See* Exhibit A at book 36501 and page 151 (referring to and conveying that portion of the Commercial Street Parcel).
- C. A 2015 survey by Owen Haskell, Inc. of the Commercial Street Parcel shows two proposed 30-foot easements crossing the Commercial Street Parcel (under the prior MDOT deed) in a generally southeasterly direction; they are marked "Proposed 30' Wide CSO Easement 'A'"; and "Proposed 30' Wide CSO Easement 'B'" respectively. A copy of the 2015 survey is attached hereto as **Exhibit B** (hereinafter, the "Survey").
- D. The proposed easements marked on the Survey in fact already have 24-inch brick stormwater overflow pipes currently installed.
- E. The District is seeking permission from MPA to operate, maintain and repair the 24-inch stormwater overflow pipes as may be necessary for the safe and sanitary management of the District's stormwater and wastewater treatment system.

In consideration of the foregoing, the parties agree to the following:

II. License

1. MPA grants to the District a license to access the Commercial Street Parcel for the sole purpose of operation, repair and maintenance of the 24-inch stormwater overflow pipes extant in the same locations as shown in the Survey (Exhibit B), in the areas

respectively marked "Proposed 30' Wide CSO Easement 'A'"; and "Proposed 30' Wide CSO Easement 'B'" (collectively, the "License Locations"). This license to access the License Locations allows the District to perform all work necessary for the operation, repair and maintenance (corrective and/or preventative) of stormwater overflow pipes as are currently in place at the License Locations at the time of this license.

2. The District agrees it is solely responsible for the repair and maintenance of any stormwater pipes or other water management structure of any description within the License Locations.

3. In the ordinary course and except for emergencies, the District will exercise this license to access the License Locations with no less than three (3) working days' notice to MPA.

4. In the ordinary course and except for emergencies, the District's access to the Commercial Street Parcel and the License Locations shall be restricted to the hours of 9:00 AM – 4:00 PM, on regular workdays, with advance notice to MPA.

5. In the event of emergencies that endanger human health, safety, or the integrity of the District's stormwater and wastewater system, the District may access the License Locations on no notice to take immediate actions to remedy the emergency. In such case, the District shall make best efforts to immediately contact MPA to inform them of the emergency and projected scope of repairs. Other than this relaxed notice requirement, all other rights and obligations under this License Agreement remain in effect in the event of emergency.

6. MPA shall have the right, though not the obligation, to supervise any activity on the MPA Property related to any District work with appropriate personnel.

7. Any harm or disturbance to the Commercial Street Parcel caused by the District or its contractors will be promptly corrected by the District in a manner approved by MPA, and the District will fully restore the MPA Property to the material condition in which it existed prior to the District's entry and work, with such restoration to be approved by MPA in its sole discretion; provided, however, that the District may replace the current overflow pipes in the License Locations with substantially similar overflow pipes, and such substitution of substantially similar materials or technology will not be subject to MPA's review and approval (further provided that such substitutions are not materially larger than the overflow pipes currently in place at the License Locations). Nothing in this License Agreement allows the District to expand or relocate License Locations without written authorization of the MPA.

8. The District agrees to grant MPA personnel access to the License Locations for inspection prior to closing, sealing, paving over, or other completion of any repairs, maintenance, or work at the License Locations by the District or its contractor. If any of the work at the License Locations is not acceptable to MPA personnel in their sole discretion, the District agrees to correct, or cause its contractor to correct, the

unacceptable work to MPA's reasonable satisfaction, at the District's sole cost and expense.

9. The District agrees that all work and activities performed pursuant to or under authority of this License Agreement shall be done in accordance with all applicable federal, state, and local laws and regulations. The District shall be solely responsible for obtaining all legally required permits associated with the placement and operation of the structures.

10. The rights granted herein shall be exercised in such a manner as not to interfere with MPA's operations and maintenance of the Commercial Street Parcel or the MPA's nearby location at the International Marine Terminal, and any cargo transportation, maintenance, or management activities related thereto.

11. This License Agreement shall be effective on the date first written above until terminated by either party under its terms.

12. DEFAULT:

A. In the event of any breach of the reservation and conditions of this License Agreement that remain uncured for thirty (30) days after written notice thereof, or in the event of any circumstance that MPA deems to be an emergency to which the District is unwilling or unable to adequately respond, MPA shall have the right, but not the obligation, to cure such breach or emergency without giving notice of its actions to the District, and the District shall pay to MPA all reasonable costs and expenses, including attorney's fees related thereto (and including without limitation any fees and costs related to the collection of amounts owed pursuant to this provision) within thirty (30) days of being invoiced for such costs by MPA.

B. In addition to its right to cure, MPA shall have the option of terminating this License Agreement for any breach of the terms herein that remain uncured after thirty (30) days' written notice from MPA of said breach. Notice of Termination shall be given to the District in writing.

13. LIABILITY, INDEMNIFICATION, AND INSURANCE:

A. The District hereby agrees to indemnify, defend, and hold harmless MPA, its officers, agents, and employees, from all claims, suits or liabilities arising from negligent or wrongful acts, errors or omissions by the District, its officials, employees, or agents related to this License Agreement. Notwithstanding this provision, the District does not waive any immunities, defenses, or limits of liability given to it by any law, including but not limited to the Maine Tort Claims Act. 14 M.R.S. § 8101 et. seq.

B. The District shall require that its contractors indemnify, defend, and hold harmless MPA, its officers, agents, and employees, from all claims, suits or

liabilities arising from negligent or wrongful acts, errors or omissions by such contractor, its officials, employees, agents, consultants, or subcontractors related to this License Agreement.

C. The District shall, at its own expense, carry insurance coverage adequate to fund its indemnity, liability and other obligations arising from or related to the Project and this License Agreement, within the limits and provisions of the Maine Tort Claims Act. The District shall require its contractors to carry insurance coverage to adequately fund any obligations arising pursuant to this License Agreement.

14. It is understood and agreed that the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and upon the successors and assigns of MPA and the District. Rights of enforcement, cure, indemnity, and all other remedial rights shall survive termination of this License Agreement.

15. This License Agreement may not be assigned without express written permission of MPA.

16. By acceptance of this License Agreement, the District agrees that this License Agreement constitutes a personal right only and does not constitute a real property right. The District further agrees that this License Agreement contains the District's entire rights in the Commercial Street Parcel, to the exclusion of any potential interest in real property over the Commercial Street Parcel.

17. This License Agreement shall be interpreted under the laws of the State of Maine. The District and MPA agree that the venue to resolve any disputes under this License Agreement will be the Maine Superior Court in Portland.

18. This License Agreement was the result of negotiations between represented parties. Neither party will be deemed to be the drafter of this License Agreement.

19. The District represents and warrants that it has received all necessary approvals or authorizations by its governing authorities to enter into this License Agreement and fulfill the District's obligations set forth herein.

20. MPA represents and warrants that it has received sufficient authority to enter into this License Agreement and fulfill its obligations set forth herein.

21. This License Agreement may be signed in counterparts, and all counterparts together shall be considered one original instrument. This License Agreement may be signed and/or saved electronically, with such electronic signature and/or electronic records being given the same effect as a paper original signed in ink.

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

MAINE PORT AUTHORITY

PORTLAND WATER DISTRICT

A handwritten signature in cursive script, appearing to read "Jon Nass", written over a horizontal line.

By: Jon Nass
Its: CEO

A handwritten signature in cursive script, appearing to read "Carrie Lewis", written over a horizontal line.

By: Carrie Lewis

Its: General Manager

DEED OF CONVENIENCE

The **STATE OF MAINE**, acting by and through its **DEPARTMENT OF TRANSPORTATION** (the "Grantor" or "MaineDOT"), under and pursuant to the provisions of 23 M.R.S. § 4424, for consideration, hereby **TRANSFERS** all its right, title and interest in and to land and rights in land situated on the southerly side of West Commercial Street in the City of Portland, County of Cumberland, State of Maine, as further described herein to **THE MAINE PORT AUTHORITY**, a body both corporate and politic in the State of Maine (the "Grantee" or "MPA"), having a mailing address of 460 Commercial Street, Portland, Maine 04101.

Said property (the "Premises") is more particularly described in the attached **Exhibit A Legal Description** and shown on the attached **Exhibit B Plans**, being copies of the following MaineDOT Right of Way Maps:

- A. Plan entitled "State of Maine Department of Transportation Right of Way Map, Land Acquisition Plan Part II, West Commercial Street, Portland, Cumberland County, Maine" dated April 25, 2014 and recorded in Plan Book 219, Page 37 of the Cumberland County Registry of Deeds, and being further identified in MaineDOT's records as D.O.T. File No. 3-596.
- B. Plan entitled "State of Maine Department of Transportation Right of Way Map, Land Acquisitions, West Commercial Street, Portland, Cumberland County, Maine" dated April 2014, revised March 9, 2020 and recorded in Plan Book 220, Page 63 of said Registry of Deeds and being further identified in MaineDOT's records as D.O.T. File No. 3-595.

The Premises are conveyed **SUBJECT TO** the following:

1. All easements and encumbrances of record;
2. All Certificates of Completion, all recorded covenants and restrictions, and all conditions and protections affecting the Premises as set forth in the records of the Maine Department of Environmental Protection's ("DEP") Voluntary Response Action Program ("VRAP") referencing the former Portland Gas Works site. Recorded covenants and restrictions encumbering the property include the following:
 - a. Declaration of Environmental Covenant dated May 24, 2015 and recorded in Book 32334, Page 6 of said Registry of Deeds;
 - b. Declaration of Environmental Covenant dated September 18, 2019 and recorded in Book 36025, Page 267 of said Registry of Deeds; and
 - c. Declaration of Environmental Covenant dated September 18, 2019 and recorded in Book 36025, Page 291 of said Registry of Deeds.
3. The condition subsequent that, in the event MPA no longer uses the Premises for port-related transportation purposes, MaineDOT shall have the right, upon sixty (60) days prior written notice, to reenter and retake the Premises, and MPA shall surrender

Deed of Convenience
MaineDOT to Maine Port Authority
Portland, Maine

the same and execute any documentation that MaineDOT reasonably requires to evidence the vesting of fee simple title in Maine DOT.

4. The condition that MPA shall not convey the Premises, or any portion thereof, to a third party without obtaining MaineDOT's prior written permission, which shall be granted at MaineDOT's sole discretion.
5. The terms of an existing Easement Agreement between MaineDOT and Northern Utilities, Inc. d/b/a Unitil dated December 15, 2016 and recorded in Book 33716, Page 257 of said Registry of Deeds.
6. All utility easements and installations of record and located on the Premises and to those rights that any utility enjoys over the Premises for maintenance, location or relocation of poles and other installations.

The Grantor makes no representations or warranties with respect to the Premises conveyed. The representations and warranties so excluded encompass, but are not limited to, those pertaining to: land use and environmental matters; fitness of the Premises or any portion thereof for any particular purpose; water quality or quantity; the condition or quality of the soil; inchoate or unrecorded liens; or the existence, status, or condition of access to, or public utilities serving the Premises. Any subsequent use of, improvement to, or construction on the parcel is subject to all applicable laws, regulations, ordinances, and permitting requirements.

IN WITNESS WHEREOF, the said State of Maine, acting by and through its Department of Transportation, has caused this instrument to be executed by Bruce A. Van Note, its Commissioner, thereunto duly authorized this 11th day of March in the year two thousand twenty.

STATE OF MAINE
Department of Transportation


Bruce A. Van Note, Commissioner

STATE OF MAINE
County of Kennebec

March 11, 2020

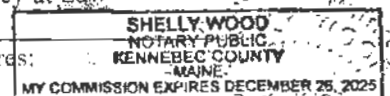
Personally appeared the above-named Bruce A. Van Note, Commissioner of the Maine Department of Transportation, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the State of Maine.

Before me,


Notary Public/Attorney at Law

Print name:

My commission expires:



Deed of Convenience
MaineDOT to Maine Port Authority
Portland, Maine



EXHIBIT A
Legal Description

THREE CERTAIN PARCELS OF LAND, together with any improvements held by the Grantor thereon and not otherwise excepted or excluded herein, situated on the southerly side of West Commercial Street in the City of Portland, County of Cumberland and State of Maine described as follows (the "Premises") and depicted on the attached **Exhibit B Plans** (the "Right of Way Maps"):

PARCEL ONE:

All land, and rights in land located within the following described boundaries:

COMMENCING at a granite monument found in a manhole located in the southerly sideline of West Commercial Street about 393' northerly of the intersection of the said West Commercial Street and Clark Street, as shown on said Right of Way Map;

THENCE S 32°36'10" W along the southerly sideline of West Commercial Street 86.09 feet to the **point of beginning**, said point being the northeasterly corner of property conveyed by Portland Terminal Company to New Yard, LLC by deed dated July 31, 2013 and recorded in Book 30887, Page 247 of the Cumberland County Registry of Deeds;

THENCE from said point of beginning S 32°31'38" E along the westerly line of land now or formerly of the City of Portland 580 feet, more or less to mean low water;

THENCE westerly and southwesterly along mean low water 64 feet, more or less, to a point on the easterly line of land now or formerly of Casco Wharf & Storage as described in Book 1507, Page 126 of said Registry of Deeds (which is a part of the parcel herein described);

THENCE S 32°31'38" E along said easterly line of said Casco Wharf & Storage 50 feet more or less to the Former Harbor Commissioner's Line of 1929;

THENCE S 37°45'10"W along said Harbor Commissioner's Line 600 feet, more or less to a point;

THENCE S 62°18'00" W along said Harbor Commissioner's Line 400 feet, more or less, to a point;

THENCE S 78°39'00" W along said Harbor Commissioner's Line 117 feet, more or less, to the southerly corner of a parcel shown on said Right of Way Map as "Parcel 5";

Deed of Convenience
MaineDOT to Maine Port Authority
Portland, Maine

THENCE N 21°46'06" W 60 feet, more or less, to the mean low water line as shown on said Right of Way Map;

THENCE continuing N 21°46'06" W 105 feet, more or less, through land now or formerly of New Yard, LLC to the southerly corner of a parcel of land formerly owned by Northern Utilities, Inc., d/b/a Until;

THENCE N 43°25'17" W along the westerly boundary of said land formerly of said Northern Utilities (which is a part of the parcel herein described) and the easterly boundary of land now or formerly of said New Yard, LLC 435.50 feet to the northwest corner of said former Northern Utilities parcel and a point that represents the northeast corner of said land now or formerly of said New Yard, LLC;

THENCE S 70°47'58" W along the northerly boundary of said land now or formerly of said New Yard, LLC 381.52 feet to land formerly of Portland Terminal Company and Maine Central Railroad Company and now of the State of Maine as described in a Notice of Condemnation recorded in Book 31408, Page 301 of said Registry of Deeds (said land now of the State of Maine being Parcel Two described herein);

THENCE N 16°58'37" W along land of the State of Maine and now or formerly owned by Portland Terminal Company and Maine Central Railroad Company 149.35 feet to the southerly side of West Commercial Street;

THENCE N 73°01'23" E along the southerly sideline of said West Commercial Street 1053.20 feet to a point;

THENCE N 32°36'10"E along the southerly sideline of said West Commercial Street 551.51 feet to the **point of beginning**.

The above described parcel contains 18 acres, more or less.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL any existing gas facilities, including without limitation, natural gas and propane pipelines, buildings, associated fixtures and related appurtenances, improvements and other personal property that are owned by or are in the custody and control of Northern Utilities, Inc., d/b/a Until.

MEANING AND INTENDING TO CONVEY all rights acquired by the Grantor through the following:

- a. Notice of Condemnation filed in said Registry of Deeds on April 30, 2014 in Book 31470, Page 191 of said Registry of Deeds; and

Deed of Convenience
MaineDOT to Maine Port Authority
Portland, Maine

- b. Notice of Condemnation filed in said Registry of Deeds on May 11, 2016 in Book 33101, Page 252 of said Registry of Deeds

PARCEL TWO:

All land and rights in land within the following described boundaries:

COMMENCING at a point on the southerly sideline of West Commercial Street at the northwesterly corner of land now or formerly of New Yard, LLC recorded in the Cumberland County Registry of Deeds in Book 30887, Page 247;

THENCE, S 16°58'37" E along the westerly line of land of said New Yard, LLC 90.30 feet to the **point of beginning**;

THENCE from said point of beginning S 16°58'37" E continuing along the westerly line of land of New Yard, LLC 67.90 feet;

THENCE the following courses and distances through land of Maine Central Railroad Company:

S 66°19'39" W for a distance of 57.45 feet;
S 62°41'27" W for a distance of 125.13 feet;
S 59°26'10" W for a distance of 495.19 feet;

THENCE, along a curve to the right with a radius of 725.74 feet, having an arc length of 165.42 feet, having a chord bearing of S 65°57'58" W and chord length of 165.07 feet;

THENCE, S 72°29'45" W for a distance of 519.07 feet;

THENCE, along a curve to the right with a radius of 725.78 feet, having an arc length of 185.34 feet, having a chord bearing of S 79°48'41" W and chord length of 184.84 feet;

THENCE, S 87°07'38" W for a distance of 21.45 feet to a point;

THENCE, S 02°52'22" E for a distance of 26 feet, more or less, to the spring high tide line;

THENCE, generally westerly along the spring high tide line 1316 feet, more or less, to land now or formerly of Cianbro Corp. recorded in said Registry of Deeds in Book 3424, Page 116, being on a bearing of S 74°55'10" W a distance of 1075.68 feet from the last mentioned point;

THENCE, the following courses and distances along land of said Cianbro Corp.:
N 16°59'42" W for a distance of 171.32 feet;
S 79°48'18" W for a distance of 347.84 feet;

Deed of Convenience
MaineDOT to Maine Port Authority
Portland, Maine

N 16°59'42"W for a distance of 53.00 feet to the southerly sideline of Cassidy Point Road;

THENCE, N 73°00'18" E along the southerly sideline of Cassidy Point Road 263.93 feet to the southerly sideline of West Commercial Street;

THENCE, N 82°56'03" E continuing along the southerly sideline of West Commercial Street 543.92 feet to an angle point;

THENCE, N 77°41'31" E continuing along the southerly sideline of West Commercial Street 16.88 feet;

THENCE, the following courses and distances through land of Maine Central Railroad Company:

N 84°41'57" E for a distance of 219.48 feet;

N 86°01'33" E for a distance of 312.82 feet;

N 87°07'38" E for a distance of 273.21 feet;

N 72°29'45" E for a distance of 542.24 feet;

THENCE, along a curve to the left with a radius of 673.74 feet, having an arc length of 153.57 feet, having a chord bearing of N 65°57'58" E and chord length of 153.24 feet;

THENCE, N 59°26'10"E a distance of 693.10 feet to the point of beginning.

The above described parcel contains 5.0 acres, more or less.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL the premises conveyed by the State of Maine to Cianbro Corporation by Governor's Deed dated January 8, 2015 and recorded in Book 32199, Page 285 of said Registry of Deeds containing 5780 square feet, more or less.

MEANING AND INTENDING TO CONVEY all rights acquired by the Grantor through its Notice of Condemnation filed in said Registry of Deeds on March 27, 2014 in Book 31408, Page 301 of said Registry of Deeds, excepting the aforementioned premises conveyed to Cianbro Corporation in Book 32199, Page 285.

PARCEL THREE:

All right, title and interest in and to the intertidal and submerged lands adjoining the parcels described above and located between the spring high tide line and the Former Harbor Commissioner's Line of 1929 as shown on said Right of Way Maps and acquired by the Grantor by virtue of the above-referenced Notices of Condemnation, to the extent that such rights are not otherwise excepted herefrom.

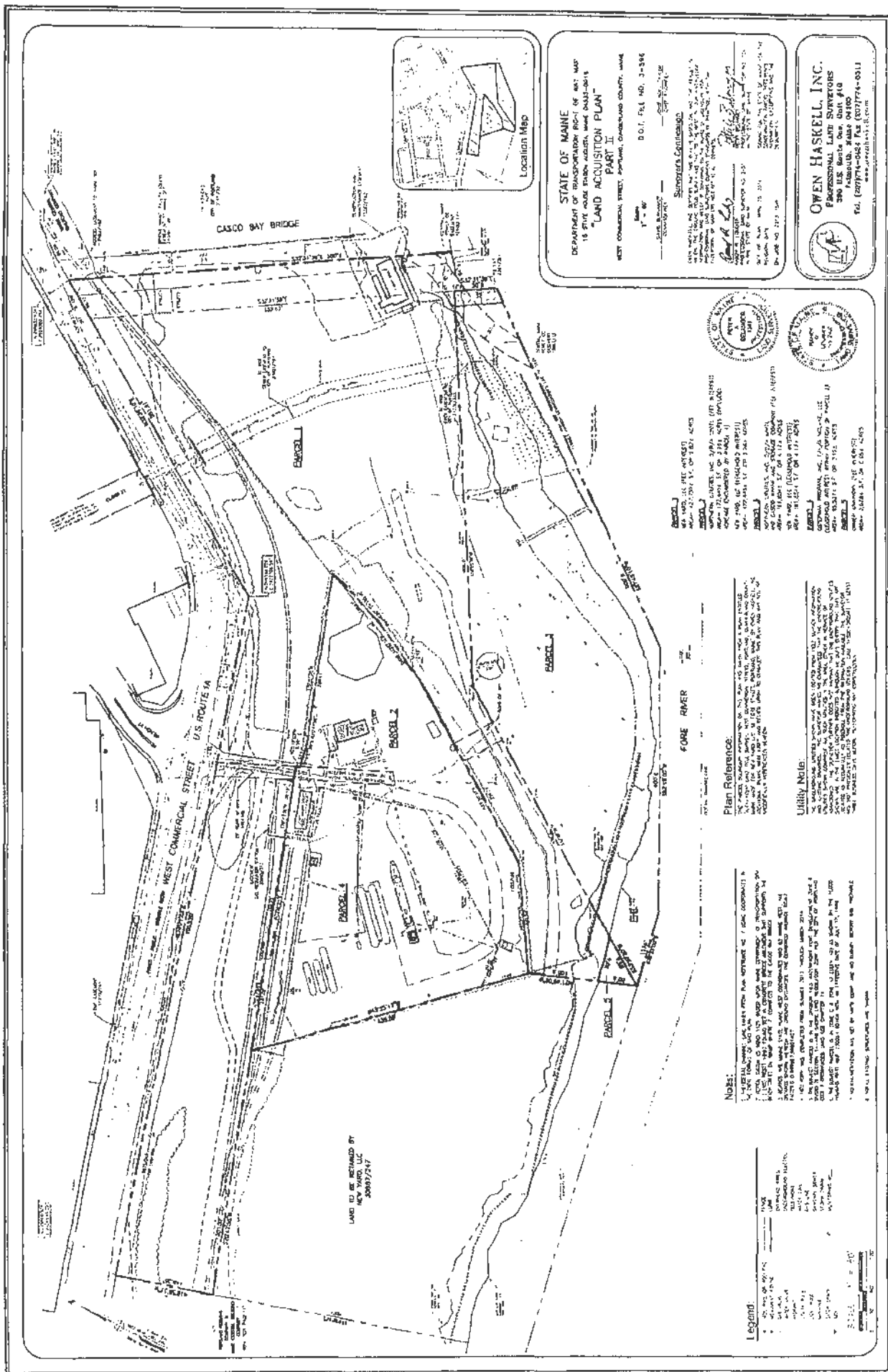
Deed of Convenience
MaineDOT to Maine Port Authority
Portland, Maine

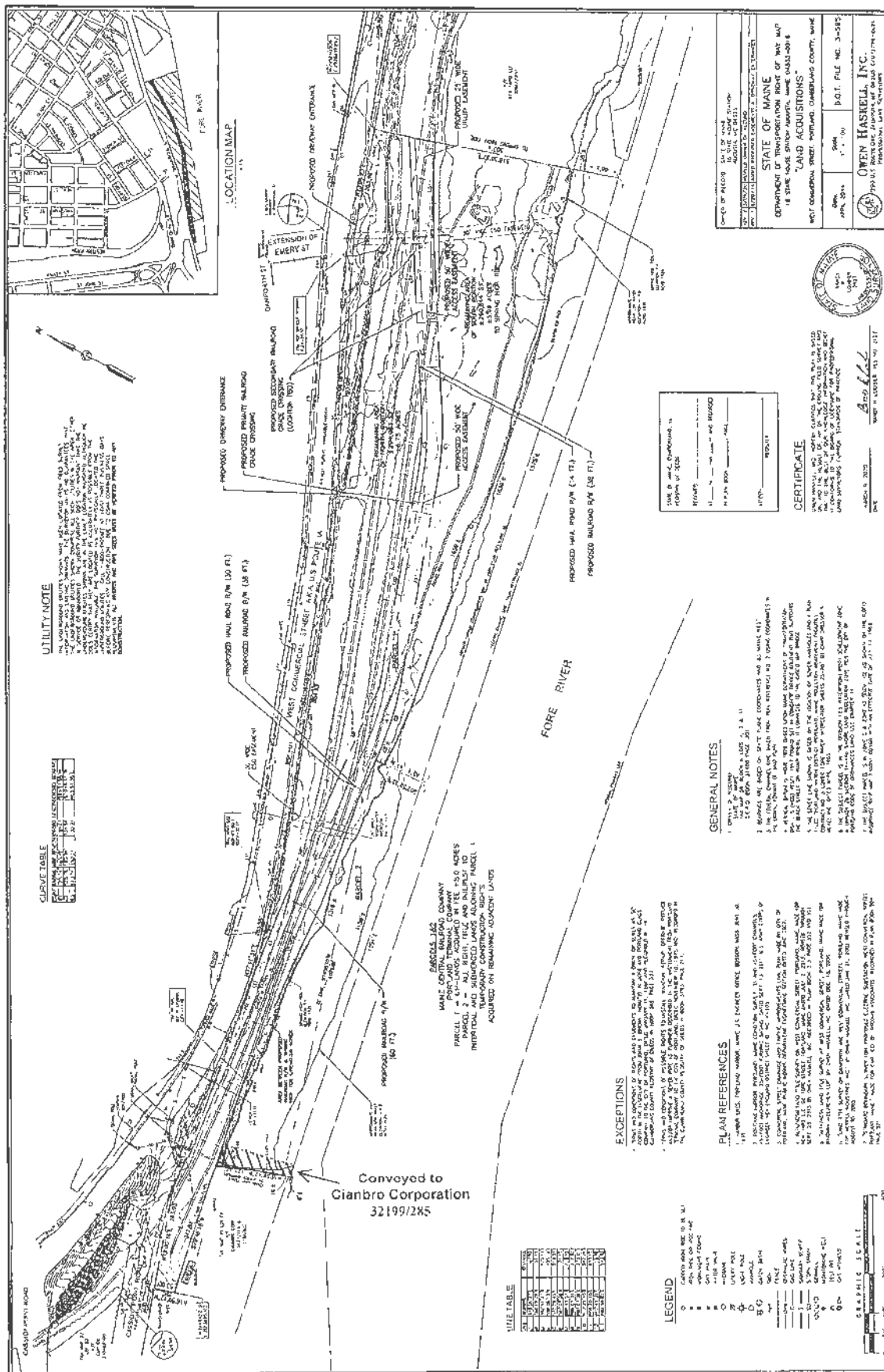
EXHIBIT B

Plans

(see following two pages)

Deed of Convenience
MaineDOT to Maine Port Authority
Portland, Maine





Received
Recorded Register of Deeds
Mar 12, 2020 08:21:19A
Cumberland County
Nancy A. Lane

