

Order 175-20/21  
Passage: 9-0 on 3/1/2021

Effective 3/10/2021

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 AN EASEMENT  
TO FIRSTLIGHT FIBER, INC. IN FRESHMAN ALLEY**

**ORDERED,** that the attached easement in Freshman Alley, near 417 Congress Street, from the City of Portland to FirstLight Fiber, Inc. is hereby granted 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 document and any other related documents necessary or convenient to carry out the intent of said document.

## EASEMENT AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS that the **City of Portland**, a municipal corporation organized and existing under the laws of the State of Maine with offices at 389 Congress Street, Portland, Maine 04101 (the “**City**”), as owner of an alley-way, located in Portland, Maine, adjacent to the Congress Street right-of-way and being referred to as Freshman Alley (“**Premises**”),

**RELEASES** to **FirstLight Fiber, Inc.**, a Delaware corporation with a mailing address of 41 State Street, 10<sup>th</sup> Floor, Albany, New York 12207, doing business as **FirstLight**, and its successors and assigns (“**Grantee**”), without covenant,

an **EASEMENT** in gross (the “**Easement**”) to construct, install, maintain, operate, alter, repair, rebuild, inspect, patrol, replace in the same or different size, and remove, fiber optic communications facilities including fiber-optic cable, handholes, and conduit for the purpose of providing telecommunication service, together with all necessary meters, fittings, fixtures, equipment and appurtenances (collectively, the “**Fiber Facilities**”), over, under and within the Premises and as is described further and depicted on the attached **Exhibit A**, (the “**Easement Area**”) to serve only the property known as Portland High School at 284 Cumberland Avenue, Portland, Maine. Notwithstanding anything to the contrary herein, Grantee shall not install any above-ground Fiber Facilities in the Easement Area, without the prior written consent of the City, which the City may withhold in its absolute discretion.

The City further grants Grantee the right to use temporarily land adjacent to the Easement Area for purposes of construction, installation, maintenance, alteration, repair, rebuilding, inspection, replacement, and/or removal (collectively, “**Utility Work**”), together with the right to cut and remove trees, obstructions, bushes, shrubs, roots, and earth, and to do any other work necessary for the purposes of constructing, maintaining, operating, repairing and replacing said Fiber Facilities within the Easement Area. In the event that Grantee disturbs the surface of the Easement Area or any of Grantors’ land adjacent to the Easement Area in connection with the exercise of its rights under this Easement Agreement, Grantee will restore the surface of such areas so-disturbed to substantially the same or better condition as existed prior to such disturbance.

The Easement is subject to the existing rights of other utilities that may be located within the Easement Area.

The City agrees that no building or other structure shall be erected or installed within the Easement Area contrary to any statute, law, ordinance or safety regulation or policy. Rights

reserved to the City shall not be used or exercised in any manner which will interfere with the rights, privileges and authority herein granted to Grantee.

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 and easements herein granted, provided that such use conforms to all applicable codes and in accordance with good engineering practices, and shall not materially interfere with, in Grantee's reasonable judgment, the exercise by Grantee of the rights and easements herein granted.

**Grantee's Affirmative Covenants to the City.**

The Grantee, its successors and assigns shall not perform any work within the Easement Area without the prior written consent of the Grantor, its successors and assigns, which consent shall not be unreasonably delayed or withheld, except consent for above-ground Fiber Facilities, which the City may withhold in its absolute discretion. In circumstances where repair or replacement of the Fiber Facilities is required on an immediate basis due to emergency conditions, Grantee need not obtain Grantor's prior written consent, but Grantee will notify Grantor of such work as soon as practical.

Whenever exercising its rights within the Easement Area pursuant to the provisions of a right or easement granted hereunder, such activity shall be performed in a safe, diligent and workmanlike manner, at Grantee's sole cost and expense, in compliance with all applicable laws, ordinances, and regulations, including, without limitation, any and all requirements of the City regarding land use approvals. Grantee shall promptly remove all waste, tools, and all material and equipment after each permitted entry upon the Easement Area.

In the event that Grantee disturbs the surface of the Easement Area or any of Grantors' land adjacent to the Easement Area in connection with the exercise of its rights under this Easement Agreement, Grantee will, at its sole expense, restore the surface of such areas so-disturbed to substantially the same or better condition as existed prior to such disturbance.

Grantee agrees, binds and obligates itself, its successors and assigns to procure and maintain throughout the term of this Easement Agreement 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 naming the City as an additional insured thereon. In addition, Grantee 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 Grantees' contractors and subcontractors.

Grantee, by execution of this Easement Agreement, hereby agrees to assume and hereby does assume responsibility for any and all claims and/or damage to persons or property arising out of or in any way related to Grantee's exercise of the rights granted by this Easement Agreement, and does hereby forever waive, release, relinquish, remise, defend, indemnify, hold harmless, and discharge the City, its agents, employees, successors and assigns from and against any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments (collectively, "Claims") whatsoever of every name and nature, in law and in equity, including without limitation those related in any manner to any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the area covered by this Easement Agreement, arising out of the presence in and use by the Grantee of the area covered by this Easement Agreement. Grantee's indemnification obligations under this paragraph do not apply to claims or damages arising solely from the acts or omissions of the City its agents, employees, successors and assigns.

In the event Grantee, its successors or assigns, no longer needs the Fiber Facilities, it shall notify the City in writing, and the parties shall meet to determine the appropriate disposition of those facilities, at Grantee's sole expense, and the potential extinguishment of this Easement Agreement.

This Easement Agreement, as the same may be amended from time to time, shall be binding on and inure to the benefit of the successors and assigns of the parties: the burdens of the Easement created hereby shall burden and run with the Premises, and Grantee shall have the right to assign its Easement created hereby.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]*

IN WITNESS WHEREOF, the City and Grantee have caused this instrument to be executed on this \_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY:  
CITY OF PORTLAND**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Jon P. Jennings  
Its City Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND, SS \_\_\_\_\_, 2021

Then personally appeared the above-named Jon P. Jennings, in his capacity as City Manager for the City of Portland, Maine, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act of deed of said City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Maine Attorney at Law  
Printed Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

*[SIGNATURES CONTINUE ON FOLLOWING PAGE]*

**GRANTEE:**

**FirstLight Fiber, INC., d/b/a FirstLight**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Peter SeeHusen  
Its: VP, OSP Engineering

STATE OF MAINE  
COUNTY OF CUMBERLAND, SS

\_\_\_\_\_, 2021

Personally appeared before me the above named authorized representative of FirstLight, Inc., d/b/a FirstLight/Oxford Networks, \_\_\_\_\_, its \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her/their free act and deed.

Before me,

\_\_\_\_\_  
Notary Public/Maine Attorney at Law  
Printed Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**Easement Area**

Two feet on either side of the centerline of the Fiber Facilities as installed running northwesterly nearly perpendicular to the Congress Street Right of Way, from the existing electric company manhole in the Congress Street Right of Way opposite the Congress Street end of Freshman Alley (so called) through, under, and across the Premises about 191 feet more or less to a point and an existing electric company manhole in the courtyard southeasterly of and adjacent to Portland High School; thence running northwesterly from the second described electric company manhole 25 feet, more or less into Portland High School, as shown on the Aerial Sketch Plan, which will be incorporated into a plan to be filed with the City of Portland Engineer's Archives:

AERIAL SKETCH PLAN:

